

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 946-10-19 Cncv

Kaanta's Condos, LLC,
Plaintiff

v.

Hayley Hancock,
Kelsey White,
Monica Demers,
Defendants

VERMONT SUPERIOR COURT
FILED

JAN 23 2020

CHITTENDEN UNIT

RULING ON APPEAL

This is an appeal from the Burlington Housing Board of Review. The Board found that appellant Landlord had improperly withheld funds from a security deposit. Landlord appeals.

There are two issues here. Landlord first argues that because the Board did not issue its ruling within 30 days, the ruling should be vacated. The 30-day period comes from the Burlington Code of Ordinances § 18-57. That states that “in no event” shall the Board’s decisions be issued more than 30 days after hearing. However, the ordinance imposes no penalty for failing to meet that deadline.

Our Supreme Court has held that language that on its face appears mandatory, such as the words “must” or “shall,” is not always what it seems. “[A] statutory time limit is mandatory only if it contains both an express requirement that an action be undertaken within a particular amount of time *and a specified consequence for failure to comply with the time limit.*” State v. Singer, 170 Vt. 346, 348 (2000) (emphasis added), citing In re Mullestein, 148 Vt. 170, 173 (1987). There is no consequence stated in the ordinance for a failure to comply with the thirty-day deadline. Thus, under Singer and Mullestein, the

time limits are directory rather than mandatory. The failure to comply with the deadline is therefore not a basis for vacating the Board's order.

Landlord next argues that the Board failed to consider all of the evidence, pointing to the many photos submitted purportedly showing all the work that was required after tenants left. The court's only role here is to determine whether the Board had "any reasonable basis" for its decision. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt 598.

The Board found Tenants more credible on the issue of lightbulbs, and this court cannot second-guess credibility determinations. Thus, the only issue is whether the evidence could support the Board's finding that all the other charges were for things that would be considered "normal wear and tear." That is defined in the Burlington Code as "the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances . . ." Burlington Code §18-2. The lease here has the same definition. Lease ¶ 4.3.

The court has reviewed the photos and many show nothing of any consequence. In many the court cannot see anything wrong at all. Some show dust, a few items on the floor, or minor marks on the walls. The only ones of any import, other than those of lightbulbs, show burned-on food on a stove burner, and minor food spills on a cabinet and a refrigerator. The Board could reasonably conclude that basic cleaning between tenants is a normal duty of landlords, and not something for which the security deposit can be applied. Likewise, minor marks on walls are a normal incident of tenancy.

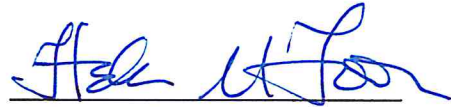
However, the evidence was undisputed that one of the stove burners (\$40) had burned-on crud and had to be replaced. That was a reasonable deduction as beyond normal wear and tear. Likewise, the evidence supported a finding of a broken curtain rod (\$20), and two broken refrigerator shelves (included as part of a \$40 charge that included

cleaning). These, too, are beyond normal wear and tear. Since the charge for the shelves is combined with a cleaning charge, the court will treat half the charge as being for the shelves. Thus, the total properly deducted was \$80.

Order

The Board's decision is affirmed in part and reversed in part. Landlord is ordered to return \$369 to the tenants within 14 days.

Dated at Burlington this 23rd day of January, 2020.

A handwritten signature in blue ink, appearing to read 'Helen M. Toor', written over a horizontal line.

Helen M. Toor
Superior Court Judge