

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

In re: Request for Hearing of BROCK)
KRAEMER Regarding Withholding of) Security Deposit Appeal
Security Deposit by SUSAN AMES for)
Rental Unit at 41 Bilodeau Parkway)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on December 7, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Charlie Gliserman, Olivia Pena and Betsy McGavisk were also present. Petitioner Brock Kraemer was present and testified. Respondent Susan Ames was also present and testified.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. Respondent Susan Ames is the owner of a rental unit, 41 Bilodeau Parkway, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Brock Kraemer moved into the rental unit with a written lease which ran from August 15, 2020 to August 15, 2021. Monthly rent was \$953.00.
3. Petitioner paid a security deposit of \$953.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on October 13, 2020.
5. On October 26, 2020, respondent sent a written statement to petitioner itemizing deductions from the deposit. Said statement itemized deductions totaling \$513.34. Respondent returned \$439.66 of the deposit to petitioner; she also returned \$25 for a parking fee.

6. Respondent's statement of deductions did not include notice of the tenant's right to request a hearing before this Board to dispute the withholding of the deposit; respondent was unaware of the requirement to do so. In addition, interest was not credited to the deposit.

Conclusions of Law

7. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

8. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

9. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

10. A landlord who decides to retain all or part of a security deposit must comply with 3 specific requirements of the ordinance: the deposit must be returned within 14 days of the date

the tenant vacated or abandoned the rental unit with a written statement itemizing any deductions; the statement must contain notice of the tenant's right to appeal to the Housing Board of Review; and the statement must be hand-delivered or sent by certified mail.¹ See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum Housing Code Sec. 18-120(c). The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). Accordingly, a landlord who fails to meet all of these requirements forfeits the security deposit. In this case, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Petitioner is entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Brock Kraemer is entitled to recover from respondent Susan Ames the following amounts:

a) \$513.34 of the principal amount of the security deposit improperly withheld after October 27, 2020;

b) Interest in the amount of \$0.44 on the entire deposit for the period August 15, 2020 to October 27, 2020; and

c) Additional interest of \$0.003 per day from October 28, 2020 until such date as the

¹An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this ____ day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Pena
Olivia Pena