

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

**In re: Request for Hearing of CONOR                    )**  
**LAMPLUGH and NIKO ANDERSON                    )**  
**Regarding Withholding of Security                ) Security Deposit Appeal**  
**Deposit by JOHN BORCH for Rental                )**  
**Unit at 3 Claire Point Road                         )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on September 21, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioners Conor Lamplugh and Niko Anderson were present and testified. Respondent John Borch was also present and testified. Also appearing and testifying were Peter Myers, Will Cotton, Cory Irish, Bernard Mallon and Philip Barrish.

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 John Borch is the agent for the property owner of a rental unit, 3 Claire Point Road, in the City of Burlington which is the subject of these proceedings. Respondent manages the property.
2. Petitioners Conor Lamplugh and Niko Anderson moved into the rental unit with a written lease which ran from January 1, 2020 to June 30, 2020. Monthly rent was \$1395.00.
3. Petitioners paid a security deposit of \$1395.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld

for damages.

4. The parties disputed the date on which petitioners were out of the unit.

Petitioners testified that they made it clear to respondent that they were out of the unit on May 30. However, no keys were returned to respondent even though he had instructed petitioners to drop off the keys at his office after they left the unit. In a June 1 email to respondent, Conor Lamplugh confirmed that they were out of the unit while acknowledging they failed to drop off any keys. In fact, Niko Anderson had misplaced his keys. Conor Lamplugh dropped off his keys on June 2, 2020. As petitioners did not return any keys until June 2 and had access to the unit until then, the Board finds the date of vacating to be June 2, 2020.

5. On June 15, 2020, respondent sent a statement by certified mail to petitioners at the address of the rental unit in accordance with ordinance requirements. Sending the statement to the address of the rental unit is allowed under city ordinance when no forwarding address has been provided to the landlord. Petitioners did not provide a forwarding address to respondent. Said statement itemized deductions totaling \$600.00. Petitioners disputed the deduction of \$440.00 for cleaning. In addition, petitioners argued that the deposit was willfully withheld.

6. Interest in the amount of \$17.20 was credited to the deposit. Respondent returned \$812.20 of the deposit to petitioners.

7. Both parties testified with respect to the deduction of \$440.00 for cleaning: \$204.75 for general cleaning and \$235.25 for steam cleaning the carpet. The charge covered emptying the refrigerator, cleaning the appliances, cleaning the bathrooms, sweeping and mopping the floors, wiping the window sills and cleaning the living room

carpet. Respondent described the bathrooms, particularly the toilets, as needing to be cleaned. Although inadvertent, petitioners acknowledged leaving some food in the refrigerator and freezer. Respondent testified he only deducted for damages beyond normal wear and tear. Respondent submitted photos of the appliances and bathrooms, both of which were dirty, in support of the cleaning deduction. Petitioners testified they cleaned as best they could when going through the list of "Cleaning Guidelines/Move-out Responsibilities" provided by respondent. With respect to the charge for steam cleaning the carpets, respondent hired Stanley Steamer to clean the living carpet. The invoice from Stanley Steamer indicates an area rug and living room carpet were cleaned. While the actual cost to have the rug and carpet cleaned was \$180.95, respondent deducted \$235.25 from the deposit. Respondent testified he charges the property owner a marked up value and that cost is deducted from the deposit. Petitioners hand cleaned the carpets before moving out.

8. Petitioners argued that the deposit was willfully withheld. Petitioners testified that respondent's failure to send a statement and return the deposit in a timely manner demonstrate willfulness. Respondent testified that he notified petitioners immediately after inspecting the unit that there would be some cleaning charges. In addition, he emailed them an itemized list of deductions on June 14, and mailed a statement and returned part of the deposit on June 15.

### **Conclusions of Law**

9. 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.

10. 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.

11. 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. The Board found the date of vacating to be June 2, 2020. Respondent emailed the deductions from the deposit to petitioners on June 14, 2020. On June 15, 2020, respondent sent an itemized statement by certified mail and returned a portion of the deposit to petitioners. Respondent's notices were timely.

12. If the failure to return a deposit with a statement within 14 days is willful, the landlord shall be liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners' sole argument that respondent's actions were willful is their claim that notice was not timely. However, the Board has concluded that respondent's notices were timely and proper. Therefore, the Board concludes the withholding of part of the deposit was not willful.

13. As to the deductions from the deposit, based on the evidence and testimony,

the Board concludes that the deduction of \$204.75 for cleaning was proper: the refrigerator, the appliances and the bathrooms all needed to be cleaned, such cleaning being beyond normal wear and tear. However, the deduction for steam cleaning the carpet was not proper as such cleaning is part of normal wear and tear. In addition, the deductions from a security deposit are for the actual cost to repair the damages, not a marked up charge.

### Order

Accordingly, it is hereby ORDERED:

14. Petitioners Conor Lamplugh and Niko Anderson are entitled to recover from respondent John Borch the following amounts:

a) \$235.25 of the principal amount of the security deposit improperly withheld after June 16, 2020; and

b) Additional interest of \$0.002 per day from June 17, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 6<sup>th</sup> day of October, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Olivia Pena  
Olivia Pena

/s/ Charlie Gliserman  
Charlie Gliserman