



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

(802) 865-7122

HOUSING BOARD OF REVIEW CITY OF BURLINGTON

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 7/25/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk

Betsy McGavisk

~~Vice~~ Board Chair

Vice

cc: Escher Lee
June LeClair

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

In re: Request for Hearing of ESCHER LEE)
And COLLEEN ADAMS Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
JUNE LECLAIR for Rental Unit at 406)
South Union Street, Apt. 5)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 11, 2022; the hearing was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin and Josh Wronski were also present. Petitioners Echer Lee and Colleen Adams were present and testified. Respondent June LeClair was represented at the hearing by Sherry Leclair who 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 June LeClair is the owner of a rental unit, 406 South Union Street, Apt. 5, in the City of Burlington which is the subject of these proceedings. Sherry LeClair manages the property.
2. Petitioners moved into the rental unit with a written lease which ran from May 1, 2021 to April 30, 2022. Monthly rent was \$1275.00.
3. Petitioners paid a security deposit of \$637.50 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on April 30, 2022.

5. Respondent did not return any deposit money to petitioners. The parties disputed whether or not an itemized list of deductions from the deposit was sent to petitioners.

Respondent testified that she mailed a statement to petitioners on May 11, 2022 at the forwarding address provided by them. In addition, respondent testified that she put the statement under the door of the rental unit on April 30. Petitioners testified they did not receive the statement either in the mail or at the rental unit. Petitioners believed respondent never sent a statement at all, in part, because all but one of the invoices for repairs at the unit were dated after May 11, the date on the itemized statement.

6. Petitioners disputed the withholding of the deposit based on respondent's failure to return the deposit or to provide an itemized list of deductions. Petitioners would not comment on any of the deductions from the deposit. Of particular concern to respondent was the removal of a bus from the property that petitioners allowed a friend to park there. Respondent repeatedly asked petitioners to move the bus over the course of a couple of months; petitioners' emails to respondent during that time period turned quite ugly. Despite assurances from petitioners that the bus would be moved, it was left at the property.

7. Petitioners also argued that the deposit was willfully withheld; petitioners believe respondent intentionally withheld the deposit and lied about mailing a statement to them. Petitioners also argued that the statement produced at the hearing was made after the fact; petitioners noted that several invoices were dated after the statement was allegedly sent so that respondent would not have had the exact deductions for the repairs that appear on the statement. Respondent denied falsifying any records. Respondent testified that she received estimates and already knew the cost of repairs when she prepared the statement.

Conclusions of Law

8. 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.

9. 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.

10. 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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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).

11. There was conflicting testimony with respect to whether or not the itemized list of deductions was sent to petitioners. The obligation to send a statement clearly rests with the landlord. There is no documentation showing that the statement was sent. While city ordinance no longer requires that a statement be sent by certified mail, a receipt evidencing a date of

mailing might be advantageous, particularly in contentious cases where the relationship between a tenant and landlord are strained. In light of the conflicting testimony and the absence of documentation evidencing the mailing of a statement, the Board concludes the notice requirements under the ordinance were not met. Consequently, the Board concludes the deposit was forfeited.

12. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondent's failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Petitioners argued that respondent intentionally withheld the deposit and falsified documents. Respondent denied the allegations and maintained that she sent an itemized statement to the address provided by petitioners. The Board notes that 2 years ago respondent appeared before the Board in a case with some similarities to the case now before us. Despite the prior case, the Board is not convinced that petitioners' deposit was willfully withheld. Therefore, we will not order double damages. However, another similar case may cause the Board to consider whether or not there is evidence of a pattern of behavior.

13. Petitioners are 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.

14. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERED:

15. Petitioners Escher Lee and Colleen Adams are entitled to recover from respondent June LeClair the following amounts:

a) \$637.50 of the principal amount of the security deposit improperly withheld after May 14, 2022;

b) Interest in the amount of \$1.65 on the entire deposit for the period May 1, 2022 to May 14, 2022; and

c) Interest of \$0.004 per day from May 15, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 25th day of July, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Josh Wronski
Josh Wronski