

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

**In re: Request for Hearing of KEEGAN                    )**  
**McCALL Regarding Withholding of                ) Security Deposit Appeal**  
**Security Deposit by MICHAEL SHEA, JR)**  
**And MICHAEL SHEA, SR. for Rental            )**  
**Unit at 565 Main Street                            )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on November 16, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Olivia Pena, Charlie Gliserman and Betsy McGavisk were also present. Petitioner Keegan McCall was present and testified. Respondents Michael Shea, Jr. and Michael Shea, Sr., although notified of the hearing and the opportunity to be heard, were not present.

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. Respondents Michael Shea, Jr. and Michael Shea, Sr., are the owners of a rental unit, 565 Main Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Keegan McCall moved into the rental unit on August 1, 2020 with a written lease. Monthly rent was \$995.00.
3. Petitioner paid a security deposit of \$995.00 to respondents. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. On August 3, 2020, petitioner gave respondents his 60-day notice of terminating the lease. Petitioner’s written notice informed respondents that he would be moving out on

September 30, 2020; petitioner's notice also included his forwarding address for the return of his security deposit. Petitioner vacated the apartment on September 5, 2020.

5. As of the date of the Board's hearing, respondents had not returned the security deposit to petitioner or sent a written statement informing him of any deductions from the deposit. When petitioner asked respondents, twice, about the return of his deposit, respondents stopped replying to his texts. Petitioner argued that respondents were willfully withholding his deposit. In addition, to respondent's failure to respond to his requests about the deposit, petitioner also argued that respondents are not new landlords, and therefore, they should be well aware of their responsibility to return the deposit or provide written notice of withholding.

### **Conclusions of Law**

6. 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.

7. 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.

8. 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). Respondents did not return the deposit and did not provide a written statement itemizing any deductions from the deposit. Therefore, the Board concludes respondents forfeited the deposit.

9. If the failure to return a deposit with a written statement within 14 days of the vacate date is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioner asked about the return of his deposit at least twice. Once he started doing so, respondent(s) stopped communicating with him. Respondents are experienced landlords and should be well aware of their responsibilities with respect to the return of a security deposit. The Board concludes that respondents' failure to return the deposit or to provide a written statement of deductions, as well as the fact that they stopped communicating with petitioners when he asked about his deposit, demonstrates a willful withholding of the deposit.

10. 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.

### **Order**

Accordingly, it is hereby ORDERED:

11. Petitioner Keegan McCall is entitled to recover from respondents Michael Shea, Sr. and Michael Shea, Jr., the following amounts:

a) \$995.00 of the principal amount of the security deposit improperly withheld after September 19, 2020;

b) \$995.00, double the amount willfully withheld; and

c) Interest of \$0.007 per day from August 1, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Patrick Murphy  
Patrick Murphy

/s/ Charlie Gliserman  
Charlie Gliserman

/s/ Olivia Pena  
Olivia Pena