



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 10/2/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Sara McCauley & Christopher Hawthorn
Don Harrington

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of SARA)
McCAULEY and CHRISTOPHER) CITY OF BURLINGTON
HAWTHORN Regarding Withholding of) HOUSING BOARD OF REVIEW
Security Deposit by DON HARRINGTON)
for Rental Unit at 12 Park St., Unit A)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 17, 2018. Board Vice Chair Josh O'Hara presided. Board Members Ben Traverse, Patrick Kearney and Steven Goodkind were also present. Petitioners Sara McCauley and Christopher Hawthorn were present and testified. Respondent Don Harrington, although notified of the hearing and the opportunity to be heard, was 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. Respondent Don Harrington is the owner of a rental unit, 12 Park Street, Unit A, in the City of Burlington which is the subject of these proceedings.
2. On April 10, 2018, petitioners signed a lease for the rental unit which was to begin on June 1, 2018. Petitioners paid a security deposit of \$1220.00 to respondent.
3. On May 29, 2018, petitioners notified respondent that they would not be moving into the unit. In early June, believing the apartment had been re-rented, petitioners contacted respondent about the security deposit. Respondent informed them that the apartment was rented and he was working on getting some pro-rated rent for June from the new tenants. Respondent also told petitioners the deposit would cover the releasing fee and some undetermined amount of rent for June. Petitioners continued to contact respondent for updates on the security deposit, but respondent did not reply to their requests for information.

4. On July 13, 2018, respondent sent an invoice to petitioners indicating the deposit was being withheld and that they owed him money. Neither respondent's communication to petitioners in June nor the July 13 invoice included notice to petitioners of their right to dispute the withholding of their deposit.

5. Interest was not credited to the deposit.

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).

9. 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.

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

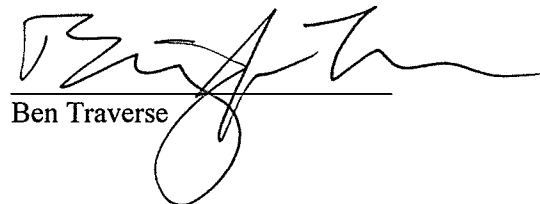
Accordingly, it is hereby ORDERED:

11. Petitioners Sara McCauley and Christopher Hawthorn are entitled to recover from respondent Don Harrington the following amounts:


- a) 1220.00 of the principal amount of the security deposit improperly withheld after June 12, 2018; and
- b) Interest of \$0.008 per day from May 29, 2018 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 2nd day of October, 2018.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


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



Patrick Kearney



Steven Goodkind



Josh O'Hara

Patrick Murphy