



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 11/30/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Shayna McMahon
Gary Fenwick

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

**In re: Request for Hearing of SHAYNA)
McMAHON Regarding Withholding of) Security Deposit Appeal
Security Deposit by GARY FENWICK)
for Rental Unit at 64 N. Union St., Unit C)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 7, 2022; the hearing was conducted remotely via Zoom. Board Chair Betsy McGavisk presided. Board Members Olivia Taylor and Evan Litwin were also present. Petitioner Shayna McMahon was present and testified. Respondent Gary Fenwick 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 Gary Fenwick is the owner of a rental unit, 64 N. Union Street, Unit C, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Shayna McMahon moved into the rental unit on June 1, 2020 under the terms of a written lease. Monthly rent was \$1450.00.
3. Petitioner paid a security deposit of \$1450.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on August 31, 2022.
5. On September 12, 2022, respondent sent a statement to petitioner in accordance with ordinance requirements. Said statement itemized damages totaling \$221.28. Petitioner disputed the deductions.

6. Interest in the amount of \$0.29 was credited to the deposit. Respondent returned \$1229.01 of the deposit to petitioner.

7. Both parties testified with respect to the deduction of \$50 for spackle and paint. The charge included labor and materials. There were 2 holes in the wall in the living room (approximately 2.5 inches in diameter) and 2 smaller holes in one of the bedrooms. When petitioner moved into the apartment there was an existing hole in the bedroom wall that had been spackled but not painted.

8. Both parties testified with respect to the deduction of \$171.28 for cleaning. On August 30, 2022, the parties conducted a move-out inspection of the apartment; the power was off in the apartment at that time. Respondent noted the holes in the walls. Petitioner testified that respondent indicated everything in the apartment looked good except the refrigerator; according to petitioner, respondent asked her to wipe down the refrigerator with Magic Eraser. Respondent testified that he told petitioner the apartment needed to be cleaned better. Petitioner testified that she spent 8 hours scrubbing the apartment before she moved out. Petitioner lived in the apartment for a little more than 2 years.

9. On September 1, 2022, respondent met the new tenants at the apartment at which time the power was on. Respondent testified that with the lights on he could see how dirty the apartment was; the new tenants also complained about the cleanliness of the apartment. Rather than hire a cleaner, respondent paid the new tenants to clean the apartment. The new tenants billed respondent for the work they did: 4 hours of cleaning at \$40/hour, \$160.00, plus the cost of materials, \$11.28. Areas cleaned by the new tenants were the walls, baseboard and shower.

Conclusions of Law

10. 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.

11. 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.

12. 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). Proper notice was provided in this case.

13. Based on the evidence, the Board concludes that the deductions for cleaning and for repairing small nail holes in one of the bedrooms were not proper as they were part of normal wear and tear. A deduction to repair the 2 larger holes in the living room wall was proper; the

damage was more than what one would expect from normal wear and tear. The Board concludes a reasonable deduction to repair those holes was \$25.00.

Order

Accordingly, it is hereby ORDERED:

14. Petitioner Shayna McMahon is entitled to recover from respondent Gary Fenwick the following amounts:

a) \$196.28 of the principal amount of the security deposit improperly withheld after September 14, 2022; and

b) Additional interest of \$0.001 per day from September 15, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 30th day of November, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor