



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 4/12/21

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara  
Board Chair

cc: Caitlin Morgan & Joe Ament  
Diamond Apartments

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

**In re: Request for Hearing of CAITLIN MORGAN)  
and JOE AMENT Regarding Withholding )  
of Security Deposit by DIAMOND ) Security Deposit Appeal  
APARTMENTS for Rental Unit at 167 )  
Loomis Street )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on October 4, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk, Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioner Joe Ament was present and testified. Respondent Diamond Apartments was represented at the hearing by Mike and Elmira Shea, both of whom testified. Also appearing and testifying was Dave Cassman.

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 Diamond Apartments is the owner of a rental unit, 167 Loomis Street, in the City of Burlington which is the subject of these proceedings. Dave Cassman is the property manager. Respondent purchased the property on June 25, 2021 – 5 days before petitioners moved out.
2. Petitioners Joe Ament and Cailin Morgan moved into the rental unit on January 1, 2017 under the terms of a written lease.
3. Petitioners paid a security deposit of \$1,860.00 to the previous owners of the property; the deposit was transferred to respondent when they purchased the property. Based on the lease, respondent believed the amount of the deposit was \$1670.00. However, upon petitioners’ filing

of the request for hearing, respondent discovered that the amount of the deposit paid by petitioners was \$1810.00. Respondent acknowledged petitioners were entitled to the return of an additional \$140.00 to make up for the difference. 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 June 30, 2021.

5. Respondent returned \$1,132.68 of the security deposit to petitioners. Petitioners did not dispute that the notice was timely and that it contained notice of their right to appeal the withholding to this Board. However, petitioners argued that they did not receive a properly itemized list of deductions from the deposit. Respondent argued that the memo line in the check which itemized deductions of \$333.90 for shower cleaning and painting, and \$205.00 for general cleaning was proper; in addition, respondent provided an invoice from DC Property Maintenance, LLC in the amount of \$333.90 for “[p]ainting back bedroom walls and trim, fill any holes. Shrub [sic] down all soap scum from shower walls and floor. Removed multiple layers of black. Labor includes Time and materials 2 gallons of paint and bathroom cleaner for shower.”

6. Interest in the amount of \$1.58 was credited to the deposit.

7. With respect to the deduction of \$205.00 for cleaning, petitioners argued that the charge was unreasonable as they received an estimate of \$125 to clean the apartment. Petitioners had lined up cleaners who then cancelled at the last minute. As a result, the apartment was not cleaned before they moved out. Petitioners acknowledged the apartment needed to be cleaned, but believed the estimate they received was appropriate. Elmira Shea testified that she, Dave Cassman and the cleaner they hired spent 10 hours cleaning the apartment. Dave Cassman

testified that he spent 2 hours cleaning the shower due to the accumulation of soap scum in it. The deduction of \$205.00 was the charge for the cleaner respondent hired.

8. With respect to the deduction of \$333.90 for work done in the apartment, the charge covered everything from painting to changing lightbulbs in the apartment. Dave Cassman, who did the work in the apartment, charges an hourly rate of \$40.00 as a skilled laborer. Respondent hired him because they were under a tight turn around. Petitioners argued that the statement was not sufficiently itemized; in addition, petitioners argued that the work done by Dave Cassman was the result of normal wear and tear. The invoice from DC Property Maintenance (Dave Cassman) lumped all of his services into one sum without breaking out how much was attributable for each task. Mr. Cassman testified he spent 2 hours cleaning the shower.

#### **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 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). Petitioners did not dispute the timeliness of the notice or that respondent provided notice of their right to appeal. However, petitioners disputed that the memo line in the check and the invoice provided to them constituted an itemized list of deductions.

12. The plain meaning of the word 'to itemize' is to set down in detail or by particulars. "Itemize." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/itemize>. Accessed 9 Nov. 2021. Respondent provided an invoice for the repairs in the apartment in the amount of \$333.90. The invoice lumped all the services into one sum without indicating how much was attributable to each task. In addition, the invoice did not distinguish between charges that were attributable to normal wear and tear and charges that could be deducted from the deposit. The Board concludes that the written statement was not sufficiently detailed as it did not provide information to know how much of the deposit was deducted for each task. Consequently, the Board will only allow a deduction of \$80 (Dave Cassman's time spent cleaning the shower) for repairs in the apartment.

13. Based on the evidence and testimony, the Board concludes the deduction of \$205.00 for cleaning was proper. Petitioners did not clean the apartment before they moved out. The fact that petitioners received a lower estimate to clean the apartment does not make the cleaning charge unreasonable. The Board concludes the charge was reasonable.

**Order**

Accordingly, it is hereby ORDERED:

14. Petitioners Caitlin Morgan and Joe Ament are entitled to recover from respondent Diamond Apartments the following amounts:

a) \$393.90 of the principal amount of the security deposit (which includes the \$140 difference between the deposit given by petitioners and what respondent believed the deposit was) improperly withheld after July 14, 2021; and

c) Additional interest of \$0.003 per day from July 15, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 12<sup>th</sup> day of November, 2021.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara

/s/ Charlie Gliserman  
Charlie Gliserman

/s/ Evan Litwin  
Evan Litwin

/s/ Olivia Taylor  
Olivia Taylor