



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 2/19/20

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Josh O'Hara  
Board Chair

cc: Mydung Nguyen  
Hai Lin

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

**In re: Request for Hearing of MYDUNG )  
NGUYEN Regarding Withholding of ) Security Deposit Appeal  
Security Deposit by HAI LIN for )  
Rental Unit at 1427 North Avenue )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on January 21, 2020. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Mydung Nguyen was present and testified. Respondent Hai Lin was also present and testified. Also appearing was Yan Feng.

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 Hai Lin is the owner of a rental unit, 1427 North Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Mydung Nguyen moved into the rental unit on May 1, 2018 under the terms of a written lease. The lease was renewed on May 20, 2019 for the period May 1, 2019 through April 30, 2020.
3. Petitioner paid a security deposit of \$1725.00 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 October 31, 2019.
5. On November 18, 2019, respondent sent petitioner (by text) a list of deductions from the deposit. Respondent indicated that he would send \$1,000.00 back to her. The list did not

include notice to petitioner of her opportunity to request a hearing before this Board to dispute the deductions. Petitioner is disputing the withholding of \$725 from her deposit.

6. Interest was not credited to the deposit.

### **Conclusions of Law**

7. 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.

8. 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.

9. 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).

10. 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.<sup>1</sup> 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 and by failing to return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. 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:

12. Petitioner Mydung Nguyen is entitled to recover from respondent Hai Lin the following amounts:

a) \$725.00 of the principal amount of the security deposit improperly withheld after November 14, 2019;

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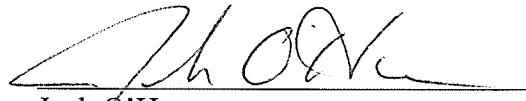
<sup>1</sup> An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

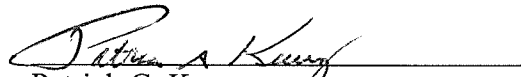
b) Interest in the amount of \$6.28 on the entire deposit for the period May 1, 2018 to November 14, 2019; and

c) Additional interest of \$0.007 per day from November 15, 2019 until such date as the amount improperly withheld is returned to petitioner.


DATED at Burlington, Vermont this 19<sup>th</sup> day of February, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Josh O'Hara

  
Patrick G. Kearney

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Olivia Pena

  
Patrick Murphy