



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 3/8/12

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Ashleigh O'Hara
Paul Hendler

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

In re: Request for Hearing of ASHLEIGH)
O’HARA Regarding Withholding of) Security Deposit Appeal
Security Deposit by PAUL HENDLER)
for Rental Unit at 191 College Street,)
Unit 211)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on December 21, 2020; the meeting was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy and Charlie Gliserman were also present. Petitioner Ashleigh O’Hara was present and testified. Respondent Paul Hendler 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 Paul Hendler and his partner lease the rental unit at 191 College Street, Unit 211, in the City of Burlington which is the subject of these proceedings. Respondent then rents out the unit, sometimes on Airbnb.

2. Petitioner Ashleigh O’Hara moved into the rental unit on March 28, 2020 and paid \$1400 to respondent for rent for April, 2020. Respondent provided conflicting testimony as to whether or not petitioner rented the unit through Airbnb. Respondent first testified that the rental arrangement started on Airbnb, but then he and petitioner worked out a deal off of Airbnb’s platform. However, in light of petitioner’s testimony that she contacted a local property manager who put respondent in touch with her, respondent agreed that a local property manager provided him with petitioner’s contact information. Both agree that the unit was rented on a month-to-month basis; petitioner also characterized their agreement as a verbal lease.

3. Petitioner paid a security deposit of \$1000.00 to respondent on April 3, 2020. While respondent argued that the money he received, a total of \$2400.00, was first and last month's rent, email exchanges between the parties after petitioner moved out evidence that \$1,000.00 was a security deposit. The Board also notes that Burlington Code of Ordinances (BCO) Sec. 18-120(a) prohibits any other payments or deposits beyond the first month's rent and security deposit and pet deposit to be required as a condition of a rental. 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 April 7, 2020.

5. On April 8, 2020, petitioner sent a text message to respondent informing him that she had moved out. She requested the return of her deposit and proration of April's rent. Petitioner followed up that text message with another one on April 13, 2020 asking about the return of her deposit. The parties exchanged many text messages between April 13 and June 8 about the deposit. In addition, petitioner sent a letter to respondent on June 8, 2020 requesting the return of her deposit; petitioner's letter also provided a synopsis of state law on the willful withholding of a deposit.

6. At the hearing, respondent argued that the law on security deposits does not apply to an Airbnb rental. In addition, he argued that petitioner did not file her request for hearing in a timely manner, and thus, the Board had no jurisdiction to hear the case. Petitioner argued that the Board should waive the filing deadline due to special circumstances leading to her vacating the apartment, as well as her relocation to another state several months later.

7. Respondent testified that he returned \$700 to petitioner, but the mail was returned to him. Petitioner never received a check or itemized statement of deductions from respondent

despite providing him with her work address in May (via a text message) and in June (via certified letter).

Conclusions of Law

8. The City of Burlington's security deposit ordinance, Burlington Code of Ordinances (BCO), 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.

9. 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.

10. Respondent puts forth two arguments with respect to the Board's jurisdiction in this case. First, he argues that the Board cannot hear the case because he rented the unit through Airbnb (despite his own testimony to the contrary) and there was no lease. Burlington's security deposit ordinance applies to deposits given "as a condition of rental, lease or occupancy of a rental unit...." BCO Sec. 18-120. A rental unit is defined as "any structure, a part of which is rented out and occupied as a residence by another, for compensation...." BCO Sec. 18-2. The ordinance does not require a written lease in order for the ordinance to apply to a rental unit. Petitioner gave respondent a security deposit as a condition of occupying the rental unit; respondent rented the unit to petitioner on a month-to-month basis with the expectation that petitioner would live there for a number of months. The Board concludes that Burlington's security deposit ordinance applies to the occupancy of the rental unit in this case.

11. Respondent next argues that the Board does not have jurisdiction to hear the case because it was not filed in a timely manner. Petitioner countered that the Board should waive the

deadline requirement due to special circumstances. When a tenant vacates a rental unit, a landlord may retain all or part of the deposit for damages to the rental unit, for nonpayment of rent, for nonpayment of a utility or other charges the tenant was required to pay to the landlord and for expenses to remove abandoned items from the unit. BCO Sec. 18-120(c). The landlord is required to return the deposit with a statement itemizing any deductions within 14 days of the date the tenant vacated the unit. BCO Sec. 18-120(c). A tenant may object to the withholding or any part of a deposit and request a hearing before this Board. BCO Sec. 18-120(e). The request shall be submitted in writing by the tenant within 30 days of receipt of notice of the opportunity to request a hearing or, in the absence of such notice, within 44 days of the date the tenant vacated the unit. BCO Sec. 18-120(e). The security deposit was not returned to petitioner. In addition, petitioner did not receive a written statement of deductions or notice of the opportunity to request a hearing before this Board. Therefore, petitioner was required to file her request for hearing within 44 days of the date she vacated the rental unit. Petitioner moved out of the unit on April 7, 2020; she filed her request for hearing on November 17, 2020. Petitioner's request was not filed in a timely manner. While petitioner argues that the Board should make an exception to the filing requirement for special circumstances, the Board has no authority to do so. The language of the ordinance is clear that her request for hearing must have been filed within 44 days of her vacate date. Consequently, the Board has no choice but to dismiss the matter for lack of jurisdiction due to the untimely filing of petitioner's request.

12. While the Board cannot issue a ruling in this matter, we note that respondent did not return the deposit or provide notice of the withholding of it within 14 days of the vacate date as required by city ordinance and state law. Had the Board been able to issue a ruling, we would have concluded that respondent forfeited the deposit for his failure to return it or a written

statement of deductions within 14 days of the vacate date as provided by BCO Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

Order

Accordingly, it is hereby ORDERED:

13. Petitioner's request for relief is DENIED for lack of jurisdiction due to petitioner's untimely filing of her request.

DATED at Burlington, Vermont this 8th day of March, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman