



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 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Kelly O'Malley
Sisters & Brothers Investment Group

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

In re: Request for Hearing of KELLY)
O'MALLEY Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by SISTERS AND) HOUSING BOARD OF REVIEW
BROTHERS INVESTMENT GROUP for)
Rental Unit at 238 College St., #105)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 7, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Olivia Pena and Betsy McGavisk were also present. Petitioner Kelly O'Malley was present and testified. Respondent Sisters and Brothers Investment Group was represented at the hearing by Joe Handy who 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 Sisters and Brothers Investment Group is the owner of a rental unit, 238 College Street, #105, in the City of Burlington which is the subject of these proceedings. Joe Handy manages the property.
2. Petitioner Kelly O'Malley moved into the rental unit with a written lease which ran from May 25, 2018 to May 31, 2019. Monthly rent was \$1300.00.
3. Petitioner paid a security deposit of \$1300.00 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 May 24, 2019. Petitioner notified one of respondent's property managers by text on May 24 that she was out of the unit.
5. On June 25, 2019, respondent sent petitioner a written statement informing her that \$622.40 of the deposit was being withheld to replace the damaged carpet. Respondent returned \$679.55 of the deposit to petitioner. Petitioner disputed the reasonableness of the deduction and the timeliness of

respondent's notice to her. Petitioner initially sought double damages, alleging a willfully unlawful withholding of the security deposit. She abandoned that request on the record at the hearing.

6. Interest in the amount of \$1.95 was credited to the deposit.

7. Joe Handy acknowledged the written statement was not sent on time. By way of explanation, he stated he was waiting for a quote for the carpet replacement.

CONCLUSIONS OF LAW

8. 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.

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. 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). Respondent's notice was not timely; therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER


Accordingly it is hereby ORDERED:


11. Petitioner Kelly O'Malley is entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

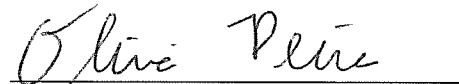
- a) \$622.40 of the principal amount of the deposit improperly withheld after June 7, 2019; and
- b) Additional interest of \$0.004 per day from June 8, 2019 until such date as the amount improperly withheld is returned to petitioner.

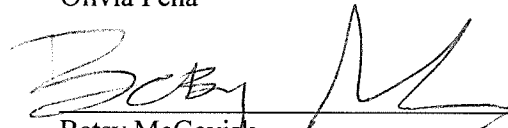
DATED at Burlington, Vermont this 23rd day of October, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Olivia Pena


Betsy McGavisk