



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

9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk

Betsy McGavisk

Board Vice Chair

cc: Madison Panyard & Martina Kroupa
Sarah & Matthew Mayer

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

In re: Request for Hearing of MADISON)
PANYARD and MARTINA KROUPA)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by SARAH and MATTHEW)
MAYER for Rental Unit at 28 Brookes)
Avenue, Unit 2)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Madison Panyard and Martina Kroupa were present and testified. Respondents Sarah and Matthew Mayer was also present and testified. Also appearing as a witness was Bryce Turner.

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. Respondents Sarah and Matthew Mayer are the owners of a rental unit, 28 Brookes Avenue, Unit 2, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Madison Panyard and Martina Kroupa¹ moved into the rental unit with a written lease which ran from June 1, 2021 to May 29, 2022. Monthly rent was \$2300.00.
3. The parties disputed the amount of the security deposit. Respondents maintained that petitioners did not pay a security deposit; however, they then acknowledged that Martina Kroupa’s deposit under the previous lease rolled over to the current lease. In the end,

¹ Martina Kroupa was an existing tenant in the apartment; she renewed her lease with 2 new tenants.

respondents testified they had a deposit of \$767.00 from Martina Kroupa, but no deposit money from either of the new tenants (Madison Panyard and Maeve Tomas).

4. Petitioners testified the amount of the deposit was \$1534.00. Prior to moving into the apartment, Madison Panyard and Maeve Tomas (who is not a party in this proceeding) paid their share of the security deposit to Martina Kroupa so that she, in turn, could Venmo each of the departing tenants their share of the deposit. As exhibited in text messages between Martina Kroupa and Sarah Mayer, this arrangement was brokered by Sarah Mayer. Sarah Mayer confirmed with the departing tenants that they received their share of the deposit from Martina Kroupa. Respondents never returned any deposit money to the departing tenants so that they retained a total deposit of \$2300.00 for the apartment. The Board finds that petitioners' security deposit was \$1534.00. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

5. Petitioners vacated the apartment on May 29, 2022 and notified respondents that they were out of the apartment. Respondents did not return the deposit or send petitioners an itemized list of deductions from the deposit. On the one hand, respondents testified there was no deposit to return; on the other hand, respondents acknowledged they had a deposit from Martina Kroupa. Respondents also testified there was unpaid rent and damage to the apartment.

6. Petitioners argued that respondents willfully withheld the deposit and requested that the Board order respondents to award double damages. When petitioners did a walk-through of the apartment with Matt Mayer just prior to leaving Mr. Mayer acknowledged that he knew he had to return the deposit or provide a statement within 14 days.

7. On June 13, 2022, Maddie Panyard texted respondents and asked about the return of their deposit. Ms. Panyard did not receive a response so she sent another text on June 14, 2022

requesting the return of their deposit by June 22 or they would file a Small Claims Court complaint. Matt Mayer responded, “We will see you in court!”

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 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). Respondents did not return the deposit and did not provide an itemized list of deductions from the deposit. Therefore, respondents forfeited the deposit.

11. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondents' failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). When petitioners and respondent Matt Mayer walked through the apartment on May 29, 2022, respondent acknowledged knowing that he was required to return the deposit or provide a statement of withholding within 14 days, yet he failed to do so. When petitioners reminded them of that obligation and gave them an opportunity to return the deposit respondents stated they would see them in court. While respondents argued petitioners did not pay a deposit so there was no money to return, they then acknowledged that there was a deposit from Martina Kroupa. However, respondents continued to argue that there was no deposit money from Maddie Panyard or the third tenant even though Sarah Mayer requested that the deposit money be paid to the departing tenants, rather than respondents returning deposit money to them and then collecting money from Madison Panyard and Maeve Tomas directly. Respondent Sarah Mayer required confirmation from the departing tenants that their deposits were returned by the incoming tenants before she allowed them to move into the apartment so she knew she had a full deposit of \$2300 for the apartment. The Board concludes that the deposit was willfully withheld: respondents knew they had 14 days to either to return the deposit or provide a written statement of deductions, but they failed to do so. In addition, respondent gave conflicting testimony about the deposit even though they knew, or should have known, that they held a total deposit of \$2300.00 for the unit.

12. 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:

13. Petitioners Madison Panyard and Martina Kroupa are entitled to recover from respondents Sarah and Matt Mayer the following amounts:

- a) \$1534.00 of the principal amount of the security deposit improperly withheld after June 12, 2022;
- b) \$1534.00, double the amount of the deposit willfully withheld after June 12, 2022;
- c) Interest in the amount of \$3.95 on the entire deposit for the period June 1, 2021 to June 12, 2022; and
- d) Additional interest of \$0.01 per day from June 13, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor