



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 ~~9/17/19~~

9/17/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Trevor Paris
Soon Kwon

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

**In re: Request for Hearing of DOUGLAS)
 WAINE, TREVOR PARIS, ALEX WING,)
 TREVOR HAAS, JOHN TREMBLEY and) CITY OF BURLINGTON
 QUINTEN ADKINS Regarding Withholding) HOUSING BOARD OF REVIEW
 Of Security Deposit by SOON KWON for)
 Rental Unit at 41 So. Willard St, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 19, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Douglas Waine, Trevor Paris, Alex Wing and Trevor Haas were present and testified. Respondent Soon Kwon was also present and testified. Also appearing and testifying as witnesses were Andrew Waine, William Ward and Ita Meno.

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 Soon Kwon is the owner of a rental unit, 41 So. Willard Street, Apt. 1, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Alex Wing, Douglas Waine, Trevor Haas and Quinten Adkins moved into the rental unit on June 1, 2017. Petitioners Jon Trembley and Trevor Paris moved into the rental unit on June 1, 2018. Monthly rent was \$4440.00.
3. Petitioners paid a security deposit of \$3710.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the date on which petitioners vacated the unit. Petitioners testified they vacated the apartment on May 25, 2019 at which time they returned the keys to the apartment. Petitioners also testified that respondent had them sign a paper stating they were out on May 25, 2019 – a claim disputed by respondent. Petitioners also provided forwarding addresses to respondent. Respondent

testified that the last petitioner moved out on May 28 and keys were left in the apartment on May 27 or 28. The Board finds petitioners' testimony regarding the move out date to be more credible and specifically finds the date of move out to be May 25, 2019.

5. On June 10, 2019, respondent sent petitioners by certified mail a statement itemizing deductions from the security deposit totaling \$5452.72; in addition, respondent's statement indicated there was unpaid rent totaling \$37,224.40. None of the deposit was returned to petitioners. Included on the statement was the following notice:

You may appeal this security deposit matter to the Burlington Housing Board. However, for legal issues involving unpaid rent payment, you may file a complaint to the small claims court.

6. Respondent's statement indicated that interest in the amount of \$254.93 was credited to the deposit.

7. Petitioners disputed the deductions. In addition, petitioners argued that the deposit was willfully withheld by respondent and requested he be ordered to return double the amount wrongfully withheld. As evidence in support of their claim, petitioners point to respondent's pattern of unfair and unreasonable behavior including, his failure to properly make repairs, his failure to make repairs in a timely manner (citing in particular the ongoing project to relocate the kitchen during petitioners' tenancy) and his list of deductions from the deposit which petitioners characterize as false and egregious. Respondent countered petitioners' argument by stating he told petitioners about the construction project (although it lasted much longer than he indicated) and kept them informed about it, he fixed items he was required to and has no notices of violations and with respect to the ongoing dispute about unpaid rent, he tried to get information from petitioners so that he could verify his records. With respect to the appeal notice in his written statement respondent stated the notice was there, he just missed including the 30 day appeal deadline in it. Respondent confirmed knowing about the strict notice requirements and court cases ruling against him (most recently in March 2019) for his failure to comply with the notice requirements.

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 sent petitioners a written itemizing deductions from the deposit on June 10, 2019 – 16 days after they vacated the apartment.

11. 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.¹ *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

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

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 all of the appeal rights in the statement and by failing to send the written statement of withholding within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. Petitioners also argued that respondent willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Neither the ordinance nor the statute define the term “willful,” so the Board may use the plain meaning of the word. *Kwon v. Edson*, 2019 VT 59, ¶ 33, --- Vt. ---, --- A.3d ---. The dictionary definition of willful includes acts which are “[v]oluntary and intentional, but not necessarily malicious[.]” and may also include acts of “inexcusable carelessness, whether the act is right or wrong.” Black’s Law Dictionary (11th ed. 2019). These principles inform the Board’s decision in this matter.

13. At the hearing on this matter, the Board asked respondent about the clear standards set forth by the Supreme Court in *In re Soon Kwon*, 189 Vt. 598(2011) and he acknowledged knowing about the strict adherence to the notice requirements. He also acknowledged the ruling against him in *Kwon v. Bilancieri et al*, Superior Court of Vermont, Chittenden County, March 20, 2019, No. 853-10-18 Cncv, which affirmed the Board’s ruling that he willfully failed to return the tenants’ deposit within 14 days because he knowingly failed to comply with the notice requirements. Respondent’s continual failure to comply with the notice requirements has become a pattern of behavior despite numerous rulings against him. There are few landlords who should know Burlington’s mandatory notice requirements better than Mr. Kwon. This standing alone provides the Board with reason to find Mr. Kwon’s wrongful withholding of the petitioner’s security deposit was willful.

14. The Board finds Mr. Kwon’s wrongful withholding was willful for a second, independent reason. At the hearing, the petitioners contended the list of deductions Mr. Kwon provided them was false and egregious. The petitioners specifically disputed the deductions for unpaid rent. Mr. Kwon charged

the petitioners \$37,224.40 in unpaid rent. To support their case, the petitioners provided the Board with copies of their rent checks, which tended to show they had paid their rent. Douglas and Andrew Waine admitted owing some back rent, but testified credibly to having settled the matter with Mr. Kwon.

15. In response, Mr. Kwon first asserted that his withholding for unpaid rent was correct. He stated that he only noticed the unpaid rent problem when another tenant (who had moved out in 2018 and is not a party here) failed to pay rent. He said that he keeps his books in triplicate for tax purposes, and he was therefore certain of the amounts of unpaid rent. However, when confronted with the fact that this story was inconsistent with his treatment of Mr. Haas and with the tenants' rent checks, Mr. Kwon immediately conceded he may have made an error in his bookkeeping.

16. The Board does not find Mr. Kwon's explanation of innocent error credible. It finds that the wrongful withholding here was willful. Mr. Kwon's conduct is more consistent with inflating or even fabricating the amount of unpaid rent due from these tenants in order to pressure them to abandon the security deposit. The Board's conclusion is supported by Mr. Kwon's notice to the tenants that they could dispute the withholding to this Board. That notice specifically separates the issue of unpaid rent from other reasons a landlord might withhold rent despite this Board's jurisdiction over the issue,² and it suggests the tenants should pursue relief in Small Claims Court instead of before this Board. While a small-claims lawsuit is less expensive than other litigation, it is not free like litigating before this Board, and the prospect of suing a landlord in court instead of coming to this Board could deter a tenant from seeking relief.³

17. Even if the Board were to find Mr. Kwon credible, the result would not change. Mr. Kwon quickly conceded at the hearing that his triplicate bookkeeping contained errors when confronted with the

² A security deposit may be withheld for non-payment of rent. Burlington Code of Ordinances § 18-120(a)(1). This Board therefore has jurisdiction over unpaid-rent disputes when the landlord withholds the security deposit to satisfy unpaid rent.

³ A small-claims suit costs \$90 to file, plus the fees charged by the sheriffs to serve the lawsuit. The costs and court process are helpfully outlined by the Vermont Judiciary. See "Small Claims Information and Instructions for Plaintiff," available at <https://www.vermontjudiciary.org/sites/default/files/documents/100-00257.pdf> (last visited Sept. 5, 2019).

petitioner's evidence and the inconsistencies in his own story. Considering the large sum of unpaid rent Mr. Kwon used to justify withholding the security deposit from the respondents, the Board would find Mr. Kwon's actions with regard to the petitioners and their security deposit inexcusably careless even if it was to find Mr. Kwon credible. Under these circumstances, in addition to Mr. Kwon's history and knowledge of the ordinances, the Board determines that respondent's withholding of petitioners' deposit was willful and that respondent owes petitioners double the amount wrongfully withheld.

ORDER

Accordingly, it is hereby ORDERED:

18. Petitioners Trevor Paris, Trevor Haas, Alex Wing, Douglas Waine, John Trembley and Quinten Adkins are entitled to recover from respondent Soon Kwon the following amounts:

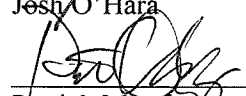
- a) \$3,964.93 of the principal amount of the security deposit (including interest) improperly withheld after June 8, 2019;
- b) \$3,964.93, double the amount withheld for respondent's willful failure to return the deposit; and
- c) Additional interest of \$0.03 per day from June 9, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 17th day of September, 2019.

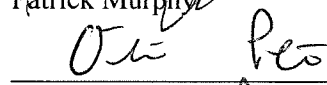
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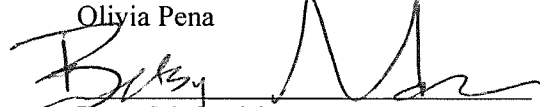
Jesh O'Hara



Patrick Murphy



Olyvia Pena



Betsy McGavisk