



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 5/25/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Daniel Perry & Ethan Aubuchon
Frank Marcou

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

**In re: Request for Hearing of DANIEL PERRY)
And ETHAN AUBUCHON Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
FRANK MARCOU for Rental Unit at)
169 North St., Apt. D)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 2, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioners Daniel Perry and Ethan Aubuchon were present and testified. Respondent Frank Marcou was also present and testified. Also appearing and testifying was Doug Doba.

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 Frank Marcou is the owner of a rental unit, 169 North Street, Apt. D, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Daniel Perry and Ethan Aubuchon moved into the rental unit on February 1, 2021.
3. Petitioners paid a security deposit of \$1400.00 to respondent. Petitioners were to receive back their security deposit at the end of the tenancy minus any amounts withheld for damages.
4. On February 7, 2022, petitioners informed respondent that they were vacating the apartment at the end of the month. Petitioners vacated the unit on March 1, 2022.

5. On March 14, 2022, respondent sent a written statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions in the amount of \$576.00 from the deposit. Respondent returned \$831.00 of the deposit to petitioners.

6. Interest in the amount of \$7.00 was credited to the deposit.

7. Both parties testified with respect to the deduction of \$316.00 for unpaid rent. Respondent deducted 7 days of rent from the deposit, the number of days the apartment was not rented due to petitioners' failure to give sufficient notice that they were moving out. Petitioners believed their actions were justified because of roaches in the unit. Respondent was taking steps to remedy the situation.

8. Both parties testified with respect to cleaning deductions taken from the deposit: \$60.00 for general cleaning and \$80.00 to shampoo the carpet. Petitioners argued that the cleaning required in the apartment was part of normal wear and tear. Doug Doba spent 6 hours cleaning in the apartment; the kitchen, including the appliances, the bathroom and the floors were dirty. In addition, the carpets were dirty and needed to be shampooed. When petitioners moved into the apartment the appliances and carpet were new. Photos of the apartment support respondent's deduction.

9. Petitioners did not dispute the deductions of \$100 (hole in door) and of \$20 (end of counter damaged).

Conclusions of Law

10. 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.

11. 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.

12. 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 landlord discovers that the tenant vacated or abandoned the unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date, 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). Proper notice was provided.

13. Based on the evidence and testimony, the Board concludes that the withholding of part of the deposit for unpaid rent and cleaning was reasonable. Petitioners did not provide sufficient notice that they were vacating the apartment which resulted in a loss of rent to respondent. The Board concludes the cleaning required after petitioners moved out of the apartment was beyond normal wear and tear; in addition, the deductions were reasonable.

Order

Accordingly, it is hereby ORDERED:

14. Petitioners Daniel Perry and Ethan Aubuchon's request for relief is DENIED.

DATED at Burlington, Vermont this 25th day of May, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Evan Litwin
Evan Litwin