

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

**In re: Request for Hearing of JOSHUA PRAWDZIK)
Regarding Withholding of Security Deposit by) Security Deposit Appeal
GREAT CEDARS LLP for Rental Unit at)
191 College Street, Apt. 308)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Joshua Prawdzik was present and testified. Respondent Great Cedar LLP was represented at the hearing by Mac Stevens who testified. Also appearing and testifying was Victoria White.

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 Great Cedars LLP is the owner of a rental unit, 191 College Street, Apt. 308, in the City of Burlington which is the subject of these proceedings. Mac Stevens manages the property.
2. Petitioner Joshua Prawdzik moved into the rental unit with a written lease which ran from July 14, 2019 to June 30, 2020. Monthly rent was \$1250.00.
3. Petitioner paid a security deposit of \$1250.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on June 30, 2020 when the lease terminated.
5. On July 13, 2020, respondent sent a statement to petitioner in accordance with

ordinance requirements. Said statement indicated the entire deposit was being withheld for “no 30-day notice.” Interest in the amount of \$1.88 was credited to the deposit. Petitioner disputed the withholding of his deposit.

6. On May 26, 2020, petitioner called Kathy Parrott, another property manager for the property, and told her he was vacating the unit when the lease terminated. He asked if he was required to provide notice in writing and she replied no. Ms. Parrott indicated that she would make a note that he was vacating on June 30. Victoria White was in the room when petitioner spoke on the phone to Ms. Parrott and she corroborated petitioner’s testimony. Mac Stevens testified that he did not receive any notice from petitioner; in addition, Ms. Parrott told him she did not receive any notice.

7. The lease does not require that a tenant provide notice of vacating when the lease terminates. In fact, the lease states that the tenant will surrender the premises to the landlord at the end of the term of the lease. Additionally, the hold over provision of the lease states, “Unless otherwise agreed by the parties in writing, there shall no holding over by LESSEE after the expiration of the term of the Agreement of Lease.”

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). Proper notice was provided.

11. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant. The ordinance is specific about the reasons for withholding a deposit. Respondent withheld petitioner's deposit for "no 30-day notice." Not only was such notice not required under the lease (which terminated on the day petitioner vacated the unit), but a security deposit cannot be withheld for such a charge under the ordinance.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Joshua Prawdzik is entitled to recover from respondent Great Cedars LLP

the following amounts:

a) \$1251.88, the principal amount of the deposit (including interest) improperly withheld after July 14, 2020; and

b) Additional interest of \$0.008 per day from July 15, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman