



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 12/19/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Evan Litwin  
Evan Litwin  
Board Vice Chair

cc: Paul Quackenbush  
Michael & Caryn Long

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

**In re: Request for Hearing of PAUL )  
QUACKENBUSH Regarding ) Security Deposit Appeal  
Withholding of Security Deposit by )  
MICHAEL & CARYN LONG for Rental )  
Unit at 73 No. Willard Street )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on November 21, 2022; the hearing was held remotely via Zoom. Board Vice Chair Evan Litwin presided. Board Members Olivia Taylor and Josh Wronski were also present. Petitioner Paul Quackenbush was present and testified. Respondents Michael and Caryn Long were also present and 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. Respondents Michael and Caryn Long are the owners of a rental unit, 73 North Willard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Paul Quackenbush moved into the rental unit under the terms of a written lease which ran from January 30, 2022 to January 29, 2023. Monthly rent was \$1350.00.
3. Petitioner paid a security deposit of \$1350.00 to respondents. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the date on which petitioner vacated the rental unit. Petitioner testified that he was out of the apartment by the evening of August 29, but acknowledged leaving some belongings in the garage and having at least 1 key to the garage and possibly another key to the apartment. The parties also disputed what, if any, agreement they had with respect to

petitioner leaving some belongings in the garage, and how many keys to the unit were returned and when. The parties met at the unit on August 30 to inspect it. Respondents testified that at the inspection petitioner refused to return all the keys in his possession to them. However, petitioner testified that he specifically asked about keeping the garage key in order to access his belongings and remove them. Between August 30 and September 7 petitioner returned additional keys in his possession, including a key that had been hidden outside. Petitioner argued that regardless of when keys were returned and whether there were items of his in the garage, the unit was vacated by August 30. Respondents argued that as long as petitioner had access to the unit and the garage it was hard to conclude that petitioner had truly moved out. Respondents testified that the new tenant contacted them and was distressed after petitioner used a key to open her apartment door. Petitioner acknowledged inserting the key into the lock, but testified that he did not open the door. Respondents changed the locks to the unit on September 8. The Board makes no findings with respect to the vacate date.

5. On September 14, 2022, respondents hand-delivered an itemized statement of withholding to petitioner's office although petitioner provided them with a forwarding address. Respondents believed notice was required to be hand-delivered or sent by certified mail and were concerned about the statement reaching petitioner in a timely manner. Respondents returned \$908.77 of the deposit, including interest, to petitioner. Respondents' written statement did not include notice to petitioner of his right to appeal the withholding of the deposit to this Board within 30 days.

6. Petitioner disputed the deductions, as well as the timeliness and propriety of the statement. Respondents argued that their notice was timely since they hand-delivered it within 14 days of the date they determined petitioner had completely moved out and had returned all the keys to the unit.

7. Petitioner also argued that the deposit was willfully withheld and requested that the Board order respondents to return double the amount of the deposit willfully withheld. Petitioner argued that respondents should have been aware of the notice requirements under city ordinance as they have managed the property since 2010. In addition, they were aware of the sample notice of withholding which includes the notice of appeal rights. Petitioner argued that respondents were on notice as to the requirements of the ordinance, but were indifferent to them, thus, evidencing the willful withholding of the deposit. Respondents denied that the withholding was willful; as far as they knew, they had followed the requirements of the ordinance. Respondents testified that they were not aware of the requirement to include notice of a tenant's appeal rights in their statement of withholding.

#### **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).

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.<sup>1</sup> 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 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. While the Board makes no findings with respect to the vacate date, respondents’ written statement did not contain notice to petitioner of his right to appeal the withholding of the deposit to this Board. Therefore, the Board concludes that the deposit was forfeited.

12. 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). Petitioner has also moved for double damages, alleging respondents’ failure to return his 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

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<sup>1</sup>An amendment to Sec. 18-120(c) removing the “certified mail” requirement took effect on January 7, 2015.

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). Petitioner argued that respondents were indifferent to the ordinance because they should have known the ordinance requirements. However, respondents did not know that they were required to include notice of petitioner's appeal rights in their statement; respondents followed what they believed were the requirements of the ordinance. The Board concludes that the deposit was not willfully withheld.

13. The Board expresses no opinion about the availability of relief in other venues.

### **Order**

Accordingly, it is hereby ORDERED:

14. Petitioner Paul Quackenbush is entitled to recover from respondents Michael and Caryn Long the following amounts:

a) \$442.02 of the principal amount of the security deposit improperly withheld after September 14, 2022; and

b) Additional interest of \$0.003 per day from September 15, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19<sup>th</sup> day of December, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Evan Litwin  
Evan Litwin

/s/ Olivia Taylor  
Olivia Taylor

/s/ Josh Wronski  
Josh Wronski