



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

12/3/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Cherylyn Ramos
Richard & Donna Niquette

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

**In re: Request for Hearing of CHERYLYN)
RAMOS Regarding Withholding of)
Security Deposit by RICHARD and) Security Deposit Appeal
DONNA NIQUETTE for Rental Unit at)
186 Park Street, #1)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 18, 2019. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Cherylyn Ramos was present and testified. Respondents Richard and Donna Niquette 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 Richard and Donna Niquette are the owners of a rental unit, 186 Park Street, #1, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Cherylyn Ramos moved into the rental unit on February 1, 2017 under the terms of a written lease. Monthly rent was \$1200.00.
3. Petitioner paid a security deposit of \$1200.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on September 3, 2019.
5. On September 11, 2019, respondents sent petitioner a statement itemizing deductions from the security deposit in accordance with ordinance requirements. Said statement itemized deductions totaling \$558.46. Respondents returned \$642.14 of the deposit to petitioner.

Petitioner did not dispute the deductions for replacing the middle bedroom door (\$94.91) or for replacing the missing shower head (\$8.55). All other deductions were disputed. In addition, petitioner alleged that respondents willfully withheld the deposit.

6. Interest in the amount of \$0.60 was credited to the deposit.

7. The front bedroom door had a hole in it that respondents attempted to repair. When the result was not satisfactory respondents replaced the door at their expense. The deduction of \$25.00 was respondents' cost (including labor) to try to repair the door. Petitioner disputed the deduction because there was no receipt documenting the work. The Board finds the damage was attributable to petitioner and the deduction reasonable.

8. During petitioner's tenancy the stove top was damaged when she accidentally dropped a heavy pot on it causing a small piece of the enamel to chip off. She showed the damage to Richard Niquette who indicated it was a quick repair and he would come do it; however, he did not return to make the repair. Respondents deducted \$60.00 to make the repair. Petitioner questioned whether or not the repair was actually made.

9. The ceiling in the kitchen and front bedroom had divets and small holes in them and several walls throughout the apartment had an excessive number of holes in them that needed to be repaired. Petitioner argued that the charge was excessive and that there was no receipt for the work that was done. Richard Niquette repaired the walls himself; he applied joint tape where needed, applied 1-3 coats of joint compound depending on the extent of the damage and sanded the areas so they could be painted. Mr. Niquette charged \$25/hour for his time. Although the actual time respondent spent making the repairs amounted to \$175.00, he only deducted \$150.00 from the deposit. The Board finds the damage was attributable to petitioner and the deduction of \$150 was reasonable.

10. Respondents deducted \$25.00 from the deposit to repair the wall between the front and middle bedrooms; there was a hole drilled through the wall to feed a co-axial cable through it. Petitioner denied drilling a hole in the wall; she arranged to have cable installed in the apartment, but had nothing to do with the actual installation. Petitioner also testified that Richard Niquette had been in the apartment in December 2018 and should have seen the cable, but never made any comments about it. Donna Niquette testified that she spoke to the cable company and was told a cable would not be installed by them in such a manner. The Board finds the damage attributable to petitioner.

11. Petitioner argued that respondents willfully withheld her deposit. In support of her claim, petitioner testified respondents had not been truthful during her tenancy in that she asked for work to be done in the apartment and they wouldn't do it. In addition, petitioner testified that respondents were not being truthful about making repairs in the apartment. Respondents denied all of petitioner's allegations. Respondents believed they had been more than reasonable and responsive to petitioner's requests throughout her tenancy; in addition, they believed the deductions they made from the deposit were very reasonable.

Conclusions of Law

12. 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.

13. 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.

14. 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.

15. Under the Minimum Housing Code, a landlord may deduct from the security deposit the actual cost to repair damage beyond normal wear and tear which is attributable to a tenant. Minimum Housing Code Sec. 18-120(c).

16. Based upon its findings above, the Board concludes that all of the deductions made by respondents were proper and reasonable except the deduction for the stove. Petitioner reported the damage during her tenancy and Richard Niquette indicated he would make the repair, but he did not.

17. Petitioner argued that respondents 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). Based on the evidence, the Board concludes the deposit was not willfully withheld.


Order

Accordingly, it is hereby ORDERED:

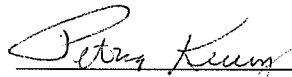
18. Petitioner Cherylyn Ramos is entitled to recover from respondents Richard and Donna Niquette \$60.00 for the deduction for the stove.

DATED at Burlington, Vermont this 3rd day of December, 2019.

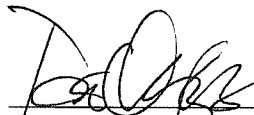
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Josh O'Hara



Patrick Kearney



Patrick Murphy



Olivia Pena