

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

In re: Request for Hearing of Raphael)
Rosenthal, Bryce Gross, Tye Martin,)
Scott Barnes and Mason Struck)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by Keith S. Aaron Weston)
Street Trust for Rental Unit at 15 Weston)
Street)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 8, 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. Petitioners Raphael Rosenthal, Tye Martin and Mason Struck were present and testified. Respondent Keith S. Aaron Weston Street Trust was represented at the hearing by Philip Aaron and Keith Aaron, both of whom testified. Also appearing and testifying as witnesses were William Ward, Amy Doner and Ed Rick.

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 Keith S. Aaron Weston Street Trust is the owner of a rental unit, 15 Weston Street, in the City of Burlington which is the subject of these proceedings. Philip Aaron is the Trustee for the Trust; he and Keith Aaron manage the property.

2. Petitioners Raphael Rosenthal, Bryce Gross, Tye Martin, Scott Barnes and Mason Struck moved into the rental unit with a written lease which ran from June 1, 2019 to May 25, 2020.

3. Petitioners paid a security deposit of \$3750.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners vacated the apartment on May 25, 2020.

5. On June 8, 2020, respondent sent a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions totaling \$2,848.47 from the deposit. Respondent returned \$944.73 of the deposit to petitioners.¹ At the hearing, Philip Aaron conceded that the deduction of \$284.16 should not have been taken since the deduction for the work had already included supplies and materials; he agreed \$284.16 should be returned to petitioners.

6. Both parties testified with respect to cleaning the unit which appeared as a \$407.50 deduction on the itemized statement. Amy Doner and a helper spent a total of 17.5 hours cleaning the apartment and making it ready for the next tenants; Ms. Doner charges \$25/hour for her time and \$15/hour for her helper's time. Ms. Doner testified that it would normally take her 8 hours to turn around an apartment for the next tenants. In this instance, however, the entire apartment needed to be cleaned. Petitioners acknowledged that they did not leave the apartment spic and span, but claim that it was dirty when they moved in, a claim disputed by Ms. Doner who cleaned the apartment before petitioners moved into it.

7. Both parties testified with respect to replacing the living room carpet, a deduction of \$446.50, and to steam clean the carpets in the bedrooms, a deduction of

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Respondent's statement incorrectly indicates \$943.73 was returned to petitioners. However, if one adds together the amount sent to each petitioner, the total is \$944.73.

\$205.65. Petitioners argued that the damage was attributable to normal wear and tear. Petitioners also argued that the carpets were in poor condition when they moved into the unit. However, petitioners also acknowledged that the carpets were dirty when they moved out. Philip Aaron testified the carpets were 2 years old. Ed Rick testified that the living room carpet was so stained and filthy that it needed to be replaced.

8. Both parties testified with respect to the deduction for the broken bathroom vanity light which appeared as a \$149.16 deduction on the itemized statement. Petitioners believed the vanity light was broken when they moved into the unit. Respondent pointed to a minimum housing inspection conducted by the City of Burlington on September 26, 2019 which does not list a broken vanity light on it as proof that the light was broken during petitioners' tenancy. Respondent argued that if the vanity light were broken when petitioners moved in, it would have been cited on the Minimum Housing Order. The Board finds the vanity was broken during petitioners' tenancy.

9. Both parties testified with respect to the hole in the bedroom door which appeared as a \$75 deduction on the itemized statement. Petitioners argued that the hole was in the door when they moved into the unit. Again respondent pointed to the September 26 Minimum Housing Order which does not cite a problem with a bedroom door. A photo of the hole in the door submitted into evidence looks as though someone kicked it. The Board finds the damage to the door occurred during petitioners' tenancy.

10. Both parties testified with respect to repairing the front screen door which appeared as a \$146.64 deduction on the itemized statement. Petitioners testified the screen door was in disrepair when they moved into the unit and they asked respondent to

replace it. Respondent pointed to the September 26 Minimum Housing Order which does not cite damage to the screen door as evidence that the damage occurred during petitioners' tenancy. The Board finds the damage occurred during petitioners' tenancy.

11. Both parties testified with respect to the missing refrigerator door seal which appeared as a \$106.95 deduction on the itemized statement. Early in their tenancy petitioners reported to respondent that the seal was broken. The seal was replaced by respondent. During the September 26, 2019 minimum housing inspection no problem with the refrigerator was found. At the end of the tenancy, respondent found the seal was missing and needed to be replaced again. Petitioners did not use the refrigerator in an unusual manner that would have caused damage to it.

12. Both parties testified with respect to the removal of mattresses and a bedframe which appeared as a \$100 deduction on the itemized statement. Petitioners testified that the basement was cluttered with items – including mattresses and a bedframe – when they moved in. Respondent acknowledged there were items in the basement when petitioners moved in, but testified mattresses and a bedframe were not among the items.

13. The Board makes no other findings related to deductions from the deposit as they were not contested by petitioners.

Conclusions of Law

14. 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.

15. 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.

16. 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.

17. 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. Section 18-2 defines normal wear and tear as

the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or

appliances by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well as its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

18. Based on the evidence and testimony, and guided by the decision in *Mongeon Bay*, the Board concludes the deduction to replace the living carpet was not proper. The carpet was in poor condition when petitioners moved into the unit. In addition, there was no evidence that petitioner's use of the carpet was unreasonable. However, with respect to steam cleaning the bedroom carpets, petitioners acknowledged they were dirty when they moved out of the unit. Therefore, the Board concludes the deduction to steam clean the bedroom carpets was reasonable and proper.

19. Based on the evidence and testimony, the Board concludes the deductions for the vanity, the bedroom door and the screen door were proper as the damage occurred during petitioners' tenancy.

20. Based on the evidence and testimony, the Board concludes the deduction for cleaning was reasonable and proper. The Board credits Amy Donor's testimony with respect to the condition of the unit before and after petitioners moved into it. Petitioners did not clean the apartment when they moved out and are responsible for the cleaning charges.

21. Based on the evidence and testimony, the Board concludes the deductions for the refrigerator door seal and for removing furniture from the unit were not proper. The items removed from the unit were there when petitioners moved into it; therefore, they are not responsible for the cost to remove them. With respect to the refrigerator door seal, it had been replaced once and there was no evidence to suggest petitioners misused the refrigerator in some way. The Board concludes the damage was not attributable to petitioners.

Order

Accordingly, it is hereby ORDERED:

22. Petitioners Raphael Rosenthal, Bryce Gross, Tye Martin, Scott Barnes and Mason Struck are entitled to recover from Keith S. Aaron Weston Street Trust the following amounts:

a) \$937.61 of the principal amount of the security deposit improperly withheld after June 8, 2020; and

b) Additional interest of \$0.006 per day from June 9, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4th day of November, 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