



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 6/2/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Charlotte Rutz
Jeff Templeton

CITY OF BURLINGTON, VERMONT

HOUSING BOARD OF REVIEW

In re: Request for Hearing of CHARLOTTE RUTZ)
Regarding Withholding of Security Deposit by JEFF) Security Deposit Appeal
TEMPLETON for Rental Unit at 1910 North Avenue)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 18, 2020; the meeting was held electronically via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Charlotte Rutz was present and testified. Respondent Jeff Templeton, although notified of the hearing and the opportunity to be heard, was not present. Also appearing and testifying was Tom Rutz.

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 Jeff Templeton is the owner of a rental unit, 1910 North Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Charlotte Rutz moved into the rental unit on September 30, 2019. She had a written lease which ran from October 28, 2019 to November 1, 2020. Monthly rent was \$1,000.00.
3. Petitioner paid a security deposit of \$1,000.00 to respondent. Petitioner was to receive back her security deposit upon vacating the unit minus any amounts withheld for damages.
4. Petitioner vacated the apartment on February 29, 2020. At the end of January, 2020, petitioner provided her notice to vacate to respondent.

5. Respondent did not return any of the deposit to petitioner and did not send her a statement itemizing deductions from the deposit. In an email dated March 6, 2020, respondent indicated his wife was getting together quotes for cleaning and repairs in the apartment and would have estimates in a few days. In response, on March 7 by email, Tom Rutz requested a list of the assessed damages. Respondent did not provide a list of assessed damages to either Mr. Rutz or petitioner as he indicated he would.

6. On March 15, 2020, Tom Rutz emailed respondent and informed him that since he did not provide a list of itemized deductions within the time period required by law, he was required to return it. On March 18, 2020, respondent replied by email that he had no intention of returning the deposit due to the condition of the apartment.

7. None of respondent's emails informed petitioner of her right to dispute the withholding of her deposit before this Board.

8. Petitioner disputed the withholding of the deposit and argued that the deposit was willfully withheld. Tom Rutz argued that respondent's failure to respond to his and petitioner's requests for information about the deposit, including providing an itemized list of the claimed damages to them, demonstrated his willfulness. In addition, when Mr. Rutz emailed respondent on March 15 and informed him of the 14-day notice requirement, respondent replied, "I have no intentions on returning Charlotte's security deposit."

Conclusions of Law

9. 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.

10. 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.

11. 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).

12. 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.¹ 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. In this case, respondent failed to comply

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

with all of the notice requirements. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. Petitioner has also moved for double damages, alleging that respondent's failure to return her security deposit was willful. If the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). As the Superior Court has recently held, "willful" for purposes of the ordinances can mean violating the ordinance by design, by intention, or 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). Although as a landlord, respondent should be aware of his obligation to return the deposit with an itemized statement of deductions within 14 days of the tenant's vacate date, even when Tom Rutz informed him of that responsibility, he responded that he had no intention of returning it. When notified of this Board's hearing, he chose not to participate. Therefore, based on the evidence and testimony before us, the Board concludes respondent's unlawful withholding of the deposit was willful.

14. Petitioner is entitled to recover interest on the deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

Order

Accordingly, it is hereby ORDERED:

15. Petitioner Charlotte Rutz is entitled to recover from respondent Jeff Templeton the following amounts:

- a) \$1,000.00 of the principal amount of the security deposit improperly withheld after March 14, 2020;
- b) \$1,000.00, double the amount of the security deposit willfully withheld;
- c) Interest in the amount of \$1.16 on the entire deposit for the period October 1, 2019 to March 14, 2020; and
- d) Additional interest of \$0.007 per day from March 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 2nd day of June, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Kearney
Patrick Kearney

/s/ Olivia Pena
Olivia Pena

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk