



**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 9/17/19

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Josh O'Hara  
Board Chair

cc: Annie Schneider  
David Bogue

**STATE OF VERMONT  
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of TIM BOYLE,            )**  
**ANNIE SCHNEIDER and JOSH WRONSKI ) CITY OF BURLINGTON**  
**Regarding Withholding of Security            ) HOUSING BOARD OF REVIEW**  
**Deposit by DAVID and LUCY BOGUE            )**  
**for Rental Unit at 9 School Street            )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on August 5, 2019. Board Chair Josh O'Hara presided. Board members Betsy McGavisk, Patrick Kearney and Olivia Pena were also present. Board Member Patrick Murphy recused himself from the proceeding citing a friendship with one of the litigants. Petitioners Annie Schneider, Tim Boyle and Josh Wronski were present and testified. David Bogue, landlord of the subject apartment, 9 School Street, was present and testified as well.

**FINDINGS OF FACT**

1. Respondents David and Lucy Bogue are the owners of 9 School Street which was rented as a rental unit under a lease contract which is the subject property of this proceeding.
2. Petitioners Annie Schneider, Tim Boyle and Josh Wronski were the tenants in the rental unit with consecutive annual leases which began on May 24, 2015 and the last ended May 23, 2019. The deposit carried over from year to year.
3. Petitioners paid a security deposit of \$1500.00. Rent for the 12 month lease was \$1150.00 per month. Under the terms of the lease, Petitioners were to receive back the security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners moved out of the rental unit on May 23, 2019. There was some disputed testimony as to turning in the final set of keys, which seems to have ultimately been received by the Respondent not later than May 31, 2019.

5. Respondent sent Petitioner a Notice of withholding within the 14 day period required by law which indicated that there was an accounting for \$1,355.50 of withholding for damage and a balance for \$174.72 of the security deposit as a balance due from Respondent. There was \$30.22 included for accumulated interest. There was unclear testimony as to when the Notice was mailed. The date on the check was June 30, 2019. Petitioners did not claim that Notice was mailed untimely.

6. Respondent withheld \$470.00 for patching and painting 16 walls in the apartment. Respondent withheld \$567.00 for the depreciated value of replacing the refrigerator which he testified arose as a result of damage – that being a dent in the refrigerator door. Respondent withheld \$240.00 for the depreciated value of replacing the dishwasher which he testified arose as a result of 9 missing tines from the dishwasher racks. Respondent withheld \$75.00 for damage to the “Lazy Susan” – attributable to missing plastic pins used to track/hold up the device – and the cost of an improvised repair of “cleat” installation. There was testimony by both parties made as to damages and whether any of the damages constituted anything beyond normal “wear and tear” or not. Respondent acknowledged that both the refrigerator and the dishwasher were still being used by the new replacement tenants in the apartment. Respondent provided photographic evidence of the 16 walls wherein there was a showing of specific “damage” to several but less than half of the 16 walls where tenants had applied a compound to wall damage in what he believed to be a poor attempt to fix wall damage which he indicated made the situation worse thereby requiring sanding and repainting in order to completely and appropriately address the situation. Respondent agreed to withdraw his claim of \$3.50 for the cost of a certified letter in mailing the Notice.

### **CONCLUSIONS OF LAW**

7. 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.

8. 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.

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120 (c), includes language mandating the manner for providing a departed tenant with a written statement which itemizing all deductions withheld from a security deposit; specifically it states that "[a] landlord shall return the deposit to a tenant within fourteen (14) days from the date on which the landlord discovers the tenant vacated or abandoned the rental unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date, with a written statement itemizing any deductions. It also states "[t]he landlord shall comply with this section by hand-delivering or sending by certified mail the statement and **any payment required** to the last-known address of the tenant, which may be the rental unit if no forwarding address has been provided." And finally it further states "[i]f a landlord fails to return the security deposit with a statement within fourteen (14) days, the landlord forfeits the right to withheld any portion of the security deposit."

10. Based on the evidence presented, the Board finds that Respondent was entitled to withhold only \$200.00 of the \$470.00 withheld for the patching and painting of walls. The balance of patch and paint work is found to be within the ambit of costs to be borne by the landlord for normal wear and tear after four years of tenant occupancy.

11. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for the dent to the refrigerator door. The refrigerator is still in use and fully functional and there is/was no evidence to show damage in the form of financial loss or cost to the Respondent.

12. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for the broken tines in the dishwasher. The dishwasher is still in use and fully

functional and there is/was no evidence to show damage in the form of financial loss or cost to the Respondent. There is/was no evidence to show that the damage was not due to normal wear and tear to a \$300 dishwasher.

13. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for damage to the Lazy Susan. There was no evidence presented to show that the missing pins derived from anything other than normal wear and tear to that particular brand of Lazy Susan.

**ORDER**

Accordingly, it is hereby ORDERED:

14. Petitioners Annie Schneider, Josh Wronski and Tim Boyle are entitled to recover from respondents David and Lucy Bogue the following amounts:

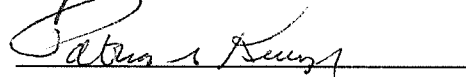
- a) \$1155.50.00 of the principal amount of the security deposit improperly withheld after June 6, 2019; and
- b) Additional interest of \$0.008 per day from June 7, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 17<sup>th</sup> day of September, 2019.

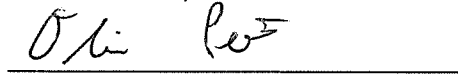
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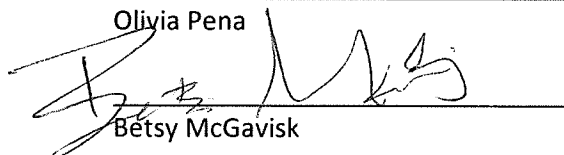
Josh O'Hara



Patrick Kearney



Olivia Pena



Betsy McGavisk