

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

**In re: Request for Hearing of BERNIQUE)
SHAKIMANA Regarding Withholding of) Security Deposit Appeal
Security Deposit by SISTERS &)
BROTHERS INVESTMENT GROUP for)
Rental Unit at 415 Pearl St, #1)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 21, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Bernique Shakimana was present and testified; petitioner was represented by Joseph Lambert, Esq.. Respondent Sisters and Brothers Investment Group was represented by their property manager, Mac Stevens, who testified. Also appearing was Georgette Niyokindi and Monica Johm (a translator for petitioner).

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 Sisters and Brothers Investment Group is the owner of a rental unit, 315 Pearl Street, #1, in the City of Burlington which is the subject of these proceedings. Mac Stevens manages the property; however, he was not the property manager when petitioner moved into the unit.
2. Petitioner Bernique Shakimana moved into the rental unit on December 12, 2018. Petitioner paid a security deposit of \$1600.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for

damages.

3. On May 20, 2020, petitioner (through Noel Mukiza) notified respondent of her intent to vacate the apartment on May 31, 2020. Petitioner vacated the apartment on June 1, 2020 at which time Mac Stevens conducted a move-out inspection. On June 2, 2020, Mac Stevens emailed Noel Mukiza and informed her of respondent's intent to retain the entire security deposit because petitioner failed to give 30-day advance notice of vacating the apartment.

4. On June 11, 2020, respondent sent petitioner a statement of deductions from the deposit in accordance with ordinance requirements. Said statement itemized deductions totaling \$6,750.00.

5. Interest in the amount of \$3.60 was credited to the deposit.

6. Petitioner acknowledged breaking one insulated window (a deduction of \$500) and causing holes in the walls (a deduction of \$500). Other deductions in the statement were disputed.

7. Petitioner's testimony with respect to the condition of the apartment when she moved in describes a unit in very poor condition (including the presence of rats at some point) with old and worn carpeting, a stove that only worked sporadically, and kitchen cupboards that were worn out and stained. Petitioner also testified that the furniture which she is being charged to be removed was there when she moved into the unit. The Board finds petitioner to be credible. In addition, Mac Stevens was not the property manager when petitioner moved into the unit and acknowledged he did not know the condition of it when she moved in.

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. 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.

11. 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. Petitioner's testimony with respect to the unit when she moved into it (which we find credible and which Mac Stevens was not able to contradict) indicates the unit was in very poor condition, there was furniture in it, the

carpet and kitchen cupboards were in terrible condition and the stove did not work properly. The evidence presented does not support the conclusion that the damages were attributable to petitioner. Therefore, the Board concludes the disputed deductions were not proper.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Bernique Shakimana is entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

a) \$603.60 of the principal amount of the security deposit (including the accrued interest) improperly withheld after June 15, 2020;

b) Additional interest of \$0.004 per day from June 16, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 16th day of October, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF

REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Olivia Pen
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman