



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 11/30/22

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Chair

cc: Rebekah Silver (for all tenants)  
Gary Fenwick

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

**In re: Request for Hearing of REBEKAH )  
SILVER, CAROLYNN van ARSDALE )  
And BRETT STINE Regarding ) Security Deposit Appeal  
Withholding of Security Deposit by )  
GARY FENWICK for Rental Unit at )  
180 Intervale Avenue, Apt. B )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on November 7, 2022; the hearing was held remotely via Zoom. Board Chair Betsy McGavisk presided. Board Members Evan Litwin and Olivia Taylor were also present. Petitioners Rebekah Silver, Carolynn van Arsdale and Brett Stine were present and testified. Respondent Gary Fenwick was 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. Respondent Gary Fenwick is the owner of a rental unit, 180 Intervale Avenue, Apt. B, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Rebekah Silver, Carolynn van Arsdale and Brett Stine moved into the rental unit with a written lease which ran from September 1, 2021 to August 31, 2022. Monthly rent was \$1950.00.
3. Petitioners paid a security deposit of \$1950.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. The date on which petitioners vacated the apartment was in dispute. All of the tenants were out of the apartment on August 27, 2022. On August 19, 2022, petitioner van Arsdale texted respondent informing him that she would be out of the apartment the morning of August 27 and asked if he could inspect it at that time. Respondent replied and asked petitioner, "Are you the last one," to which petitioner replied, "Yes." Petitioner van Arsdale testified that she also had a verbal conversation prior to August 19 at which time she informed respondent that all the tenants were moving out by August 28. On August 26, petitioner van Arsdale texted respondent again and reminded him that she would be out of the apartment the next day. Respondent acknowledged petitioner's text and reminded her to follow all the move out directions he had provided and leave "all three keys on the counter. Text me when done." On August 28, respondent texted petitioner and asked if everything went well and if the keys were on the counter; respondent also asked for their mailing address. Petitioner replied a couple of hours later saying everything went well, the keys were on the counter and gave respondent their forwarding address.

5. Despite the text messages between petitioner van Arsdale and respondent, respondent testified he did not know that Brett Stine had also moved out. Respondent testified he thought the 3 people referred to in petitioner van Arsdale's texts were her, Rebekah Silver and Rebekah Silver's boyfriend; petitioner Silver's boyfriend had sublet from her in June and July. Respondent also maintained that he had 5 units turning over on September 1 which resulted in nearly all the tenants texting him about moving out before August 31 and there was no way to keep track of everything. When the new tenants asked about moving into the apartment early, respondent met them at the apartment on August 31, 2022; since the apartment was vacant, he

allowed the new tenants to move in. As the apartment was vacant, the new tenants moved in on August 31. Respondent testified that he believed the vacate date was August 31, 2022.

6. On September 12, 2022, respondent mailed petitioners a statement indicating that \$225.00 of the deposit was being withheld for damages. Respondent returned \$1675.50 of the deposit to petitioners. Interest in the amount of \$0.50 was credited to the deposit.

7. Petitioners argued that respondent's notice was not timely, and consequently, he forfeited the right to withhold any part of the deposit. In addition, petitioners argued that the deposit was willfully withheld and requested that the Board order respondent to return double the amount withheld. The basis of petitioners' argument that the deposit was willfully withheld is that they informed respondent on multiple occasions that he had 14 days to return the deposit, and he failed to do so. Respondent testified the withholding of the deposit was not willful; he maintained that the vacate date was August 31 and he sent the notice of withholding within 14 days of that date.

### **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 landlord discovers that the tenant vacated or abandoned the dwelling 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. 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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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).

11. The parties disputed the vacate date; petitioners maintained that the vacate date was August 27 while respondent argued it was August 31. Petitioner Carolynn van Arsdale texted respondent on August 26 reminding him that she was moving out on August 27; he acknowledged the text and instructed her to follow all the move out instructions and leave all 3 keys on the kitchen counter. On August 28, respondent texted petitioner van Arsdale confirming that she was out of the unit and all 3 keys were returned. The Board is unconvinced by respondent's argument that he did not know one of the tenants, Brett Stine, was out of the apartment. There were 3 tenants on the lease, Carolynn van Arsdale, Rebekah Silver and Brett Stine; three keys were returned and Carolynn van Arsdale confirmed the move out instructions were followed. In addition, Carolynn van Arsdale told respondent that all the tenants would be out of the apartment by August 27. Based on the evidence, the Board concludes that respondent knew, or should have known, that the apartment was vacant on August 28, 2022. Consequently,

respondent was required to return the deposit with a statement by September 11, 2022.

Respondent mailed the statement on September 12, 2022. Therefore, the Board concludes notice was not timely and respondent forfeited the right to withhold any part of the deposit.

12. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to return his security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, 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). Petitioners argued that respondent willfully withheld the deposit as exhibited by his failure to return the deposit in a timely manner after petitioners informed him that he had 14 days from the vacate date to do so. Respondent argued that the deposit was not willfully withheld. While respondent's notice was not timely, the Board believes the withholding was not willful. Rather, respondent did not do a good job of logging when tenants vacated their units, and rather, assumed his tenants vacated on the last day of their lease.

### **Order**

Accordingly, it is hereby ORDERED:

13. Petitioners Rebekah Silver,Carolynn van Ardale and Brett Stine are entitled to recover from respondent Gary Fenwick the following amounts:

a) \$275.00 of the principal amount of the security deposit improperly withheld after September 11, 2022; and

b) Additional interest of \$0.002 per day from September 12, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 30<sup>th</sup> day of November, 2022.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Evan Litwin  
Evan Litwin

/s/ Olivia Taylor  
Olivia Taylor