

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

**In re: Request for Hearing of MARGARET)
SIMPSON, ANNA NORCROSS and)
EISHA LICHTENSTEIN Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
LNP, Inc. for Rental Unit at 50 Barrett)
Street, #3)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 8, 2020; the meeting 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 Margaret Simpson, Anna Norcross and Eisha Lichtenstein were present and testified. Respondent LNP, Inc. was represented at the hearing by Stephanie Gilbert who 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 LNP, Inc. is the owner of a rental unit, 50 Barrett Street, #3, in the City of Burlington which is the subject of these proceedings. Full Circle Property Management (“Full Circle”) manages the property; Stephanie Gilbert is one of the property managers at Full Circle.

2. Petitioners Eisha Lichtenstein, Anna Norcross and Margaret Simpson moved into the rental unit on June 1, 2018 under the terms of a written lease. The term of the most recent lease was June 1, 2019 to May 26, 2020. Monthly rent was \$2100.00.

3. Petitioners paid a security deposit of \$2050.00 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 26, 2020.

5. On June 8, 2020, respondent sent petitioners a statement related to their security deposit. Said statement itemized deductions of \$585.00 from their deposit. Interest in the amount of \$2.46 was credited to the deposit. Respondent returned \$1,467.46 of the deposit to petitioners.

6. The itemized statement sent to petitioners did not include notice of their right to appeal the withholding of the deposit to this Board. Stephanie Gilbert testified that she thinks the property manager who sent out the form used the incorrect one; she said they have a security deposit transmittal form specific to rental units in Burlington which have the appeal rights on them. Nonetheless, Stephanie Gilbert acknowledged the form sent to petitioner did not include those appeal rights.

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. 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).

10. 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. *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 with the notice requirements by failing to include petitioners' appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

Order

Accordingly, it is hereby ORDERED:

11. Petitioners Margaret Simpson, Anna Norcross and Eisha Lichtenstein are entitled to recover from respondent LNP, Inc. the following amounts:

a) \$585.00 of the principal amount of the deposit improperly withheld after June 9, 2020; and

b) Additional interest of \$0.004 per day from June 10, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 6th day of October, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman