



HOUSING BOARD OF REVIEW

City of Burlington

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**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 11/2/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Jill Smith & Johnathan Patterson
William Nulty

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

**In re: Request for Hearing of JILL SMITH and)
JOHNATHAN PATTERSON Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
WILLIAM NULTY for Rental Unit at)
262 Pearl Street, Apt. 3)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 18, 2021. Board Chair Josh O’Hara presided. Board Members Evan Litwin and Charlie Gliserman appeared remotely. Petitioners Jill Smith and Johnathan Patterson appeared and testified remotely. Respondent William Nulty was represented at the hearing by Dean Gallagher who appeared and testified remotely.

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 William Nulty is the owner of a rental unit, 262 Pearl Street, Apt. 3, in the City of Burlington which is the subject of these proceedings. Delbert “Dean” Gallagher manages the property for his father-in-law.
2. Petitioners Jill Smith and Johnathan Patterson moved into the rental unit under the terms of a written lease. Monthly rent was \$1550.00.
3. Petitioners paid a security deposit of \$1550.00 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 June 15, 2021.

5. Dean Gallagher asked petitioners on several occasions for a forwarding address so that he could return deposit money to them. He understood petitioners had not filled out a forwarding order for the post office and he was afraid to return the deposit to the address of the rental unit, fearing they would not receive it. Petitioners were moving out of state and were unsure of their new mailing address. Consequently, they requested that Dean Gallagher return the deposit through Venmo. In a July 2, 2021 text, Mr. Gallagher indicated using Venmo would not be a problem, but told them he was still waiting for an estimate to repair the flooring; in addition, Dean Gallagher said he would send the receipt for trash removal. When Dean Gallagher realized he would not be able to Venmo money to petitioners, he asked them again for a forwarding address.

6. On July 15, 2021, Dean Gallagher received petitioner's mailing address. On July 20, 2021, Mr. Gallagher returned \$651.00 of the deposit to petitioners. Mr. Gallagher did not provide an itemized list of deductions from the deposit or notice of petitioners' opportunity to request a hearing before this Board to dispute the withholding. In addition, interest was not credited to the deposit.

7. Petitioners argued that respondent willfully withheld the deposit on the basis that it took him 5 weeks to return any deposit money to them. In addition, it took Dean Gallagher a couple of weeks to respond to their request to have money returned via Venmo. At the move-out inspection, Dean Gallagher pointed out the floor damage and the extra garbage in the dumpster to petitioners; because he discussed the damage with petitioners he did not think he needed to provide a list of itemized deductions. Mr. Gallagher was unaware of the requirement to provide notice of petitioners' appeal rights to them. Once Mr. Gallagher had a forwarding address for petitioners he sent them a check.

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 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. 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. The Board concludes respondent forfeited the deposit by failing to provide an itemized list of deductions, by failing to return the deposit or send notice within 14 days and by failing to provide notice of petitioners' appeal rights.

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). Petitioners have also moved for double damages, alleging respondent's failure to return the 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). Dean Gallagher wrongfully believed he did not need to provide a written statement itemizing the deductions because he pointed out the damage to petitioners during the move-out inspection. Mr. Gallagher was unaware of the requirement to provide notice of petitioners' appeal rights. Although respondent and Mr. Gallagher did not provide the required notice and did not return the deposit in a timely manner, the Board concludes the failure to do so was not willful.

13. Petitioners are entitled to recover interest on the security 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 bank

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

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:

14. Petitioners Jill Smith and Johnathan Patterson are entitled to recover from respondent William Nulty the following amounts:

a) \$899.00 of the principal amount of the deposit improperly withheld after June 29, 2021;

b) Interest in the amount of \$7.52 on the entire deposit for the period July 20, 2019 to June 29, 2021; and

c) Additional interest of \$0.06 per day from June 30, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 2nd day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman