



HOUSING BOARD OF REVIEW

City of Burlington

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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 11/2/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Jami Tuch
Susan Linnell

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

**In re: Request for Hearing of JAMI TUCH,)
LILY CARR and SPENCER WEINGARD)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by SUSAN LINNELL for Rental)
Unit at 241 South Winooski Avenue, #2)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 4, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk, Charlie Gliserman, Evan Litwin and Olivia Taylor were also present. Petitioner Jami Tuch was present and testified. Respondent Susan Linnell was also present and testified. Also appearing and testifying was Kenneth Tuch.

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 Susan Linnell was the owner of a rental unit, 241 South Winooski Ave., #2 , in the City of Burlington which is the subject of these proceedings. The property was transferred to a new owner on May 17, 2021 – 10 days before petitioners moved out; petitioners’ security deposit was not transferred to the new owner.

2. Petitioners Jami Tuch, Lily Carr and Spencer Weingard moved into the rental unit with a written lease which ran from August 15, 2020 to May 27, 2021. Monthly rent was \$2475.00.

3. Petitioners paid a security deposit of \$2475.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for

damages. Jami Tuch was the tenant designated as the tenant to receive the return of the deposit for all of them.

4. Petitioners vacated the apartment on May 27, 2021.

5. On June 7, 2021, respondent sent, by certified mail, a security deposit statement to Jami Tuch at the address of the rental unit even though Jami Tuch provided respondent with a forwarding address. Said statement itemized deductions totaling \$775.00 from the deposit. A check made payable to Jami Tuch in the amount of \$1705.00 was included with the statement. Jami Tuch did not receive the statement or check until July 15, 2021. Petitioners disputed the deductions, the timeliness of the notice and whether or not the notice was proper.

6. The statement of withholding indicates \$5.17 in interest accrued. However, on the front page of the statement it appears respondent rounded that amount to \$5.00. Additionally, another section of the statement indicates \$2.58 in interest per tenant accrued in which case interest in the amount of \$7.74 should have been credited to the deposit.

7. The statement of withholding did not include notice of petitioners' right to appeal the withholding to this Board within 30 days.

8. Petitioners alleged the deposit was willfully withheld and requested double damages. Petitioners noted that respondent knew about the requirement to include notice of their appeal rights, but failed to provide such notice. In addition to her failure to provide notice of petitioners' appeal rights, Kenneth Tuch argued that respondent only returns the deposit as she sees fit and did not comply with the ordinance with respect to sending notice to the forwarding address provided to her, all of which evidence bad faith. Respondent denied willfully withholding the deposit and believed the deductions were justifiable.

Conclusions of Law

9. 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.

10. 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.

11. 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).

12. 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. Respondent did not provide notice of petitioners' right to appeal the withholding of the deposit to this Board. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. 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). The Board notes that respondent has been before this Board in the past. Therefore, she has been made aware of the notice requirements outlined in the ordinance. Petitioners argue that respondent's knowledge of the ordinance requirement and her practice of returning the deposit as she sees fit evidence bad faith and the willful withholding of the deposit. The Board concludes the deposit was not willfully withheld as respondent sent the notice in a timely manner (albeit to the last-known address rather than the forwarding address provided to her) and believed the deductions to be fair and reasonable. The Board may not reach a similar conclusion should respondent continue to appear before the Board for failure to provide appropriate notice per the ordinance.

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

14. 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 passbook savings account. Minimum Housing Code Sec. 18-120(a). Respondent's statement of withholding with regard to the amount of interest credited to the deposit was contradictory. In one place she notes \$5.00 in interest was credited to the deposit, and in another place she indicates \$5.17 in interest accrued even though the per tenant amount of interest was \$2.58 which totals \$7.74. Therefore, the Board will award additional interest in the amount of \$2.74.

Order

Accordingly, it is hereby ORDERED:

15. Petitioner Jami Tuch is entitled to recover from respondent Susan Linnell the following amounts:

- a) \$775.00 of the principal amount of the security deposit improperly withheld after June 10, 2021;
- b) Additional interest of \$2.74 on the principal amount of the deposit not returned; and
- c) Additional interest of \$0.005 per day from June 11, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 12th day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Evan Litwin
Evan Litwin