

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

**In re: Request for Hearing of SARA VACLAVIK            )**  
**And DOUGLAS LESSARD Regarding                    ) Security Deposit Appeal**  
**Withholding of Security Deposit by PEARL        )**  
**STREET HOUSING VENTURE for Rental                )**  
**Unit at 90 Pearl Street, Apt. 401                    )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on October 5, 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. Petitioners Sara Vaclavik and Douglas Lessard were present and testified. Respondent Pearl Street Housing Venture was represented at the hearing by Deb McCaffrey and Rick Bove 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 Pearl Street Housing Venture is the owner of a rental unit, 90 Pearl Street, Apt. 401, in the City of Burlington which is the subject of these proceedings. Deb McCaffrey manages the property.
2. Petitioners Sara Vaclavik and Douglas Lessard moved into the rental unit with a written lease which ran from May 12, 2016 to April 30, 2017 and renewed thereafter. Monthly rent was \$1080.00.
3. Petitioners paid a security deposit of \$1080.00 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 31, 2020.

5. On June 11, 2020, respondent mailed a statement to petitioners itemizing deductions of \$85.00 from the security deposit; respondent returned \$995.00 of the deposit to petitioners. The statement was returned to Deb McCaffrey by the post office. On July 6, 2020 (immediately after receiving the statement back from the post office), Ms. McCaffrey mailed out the statement and check again to petitioners which was received by them shortly thereafter.

6. Respondent's itemized statement did not include notice to petitioners of their right to appeal the withholding of their deposit to this Board. Deb McCaffrey testified that she was unaware of that notice requirement. In addition, interest was not credited to the deposit.

7. Petitioners disputed the withholding of part of their deposit and the timeliness of the notice sent to them. Petitioners also argued that the deposit was willfully withheld based on the lack of timely notice.

8. Petitioners also sought a refund of \$180 for a storage unit rental. Petitioners testified that a previous property manager authorized the return of the rental fee.

### **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.

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). Respondent mailed out a statement and returned a portion of the deposit on June 11, 2020. However, the statement was returned to respondent by the U.S. Postal Service. Immediately after receiving the returned mail, Deb McCaffrey mailed it out again. The Board concludes that notice was sent in a timely manner.

12. If the failure to return the security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that respondent willfully withheld the deposit on the basis that notice was not sent in a timely manner. However, the Board has already concluded that notice was sent in a timely manner and through no fault of respondent's it was returned to them by the U.S. Postal Service. The Board concludes the deposit was not willfully withheld.

13. 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.<sup>1</sup> 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 petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

14. Petitioners also sought a refund of a storage unit rental fee they paid. However, this Board's authority only relates to the return of a security deposit. Therefore, we cannot order a refund of such fee.

15. 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 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:

16. Petitioners Sara Vaclavik and Douglas Lessard are entitled to recover from respondent Pearl Street Housing Venture the following amounts:

- a) \$85.00 of the principal amount of the security deposit improperly withheld after June 14, 2020;
- b) Interest in the amount of \$11.03 on the entire deposit for the period May 12, 2016 to

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

June 14, 2020; and

c) Additional interest of \$0.0006 per day from June 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4<sup>th</sup> day of November, 2020.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara  
Josh O'Hara

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Olivia Pena  
Olivia Pena

/s/ Charlie Gliserman  
Charlie Gliserman