



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 9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Alex Wedge (via email)
Micah Trexler

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

**In re: Request for Hearing of ALEXANDRA)
 WEDGE Regarding Withholding of) Security Deposit Appeal
 Security Deposit by MICAH TREXLER)
 For Rental Unit at 337 College St, Unit 9)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the hearing was held remotely via Zoom . Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioner Alexandra Wedge was present and testified. Respondent Micah Trexler was also present and testified. Also appearing and testifying as witnesses were Jennifer Wedge and Rachel Smith.

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 Micah Trexler is the owner of a rental unit, 337 College Street, Unit 9, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Alexandra Wedge moved into the rental unit with a written lease which ran from June 6, 2021 to May 31, 2022. Monthly rent was \$2,750.00.
3. Petitioner paid a security deposit of \$2,750.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 31, 2022.
5. On June 6, 2022, respondent sent a statement, by certified mail, to petitioner informing her that \$1,173.89 of the deposit was being withheld for cleaning, flea treatment, lost rent, final water bill and personal time. Respondent returned \$1,582.39 of the deposit to

petitioner. Respondent's written statement included the following notice: "You have the right to appeal to the Housing Board of Review."

6. Interest in the amount of \$6.28 was credited to the deposit.

7. Petitioner disputed the withholding of part of the deposit on the basis that there was no damage to the unit. Petitioner acknowledged, however, that the deduction for the final water bill was appropriate.

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). Respondent returned part of the security deposit with an itemized statement which included notice of petitioner’s opportunity to appeal “to the Housing Board of Review”; however, that statement failed to include the 30-day deadline to appeal to this Board.

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 within 30 days; 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’s notice of withholding to petitioner was not proper as it did not contain the 30-day deadline for appealing. Therefore, the Board concludes respondent forfeited the deposit.

12. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERD:

13. Petitioner Alexandra Wedge is entitled to recover from respondent Micah Trexler the following amounts:

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

a) \$1,173.89 of the principal amount of the security deposit improperly withheld after June 14, 2022; and

b) Additional interest of \$0.01 per day from June 15, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor