

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

In re: Request for Hearing of KIAYA WOOD)
And SABRINA FARR Regarding) Security Deposit Appeal
Withholding of Security Deposit by JH2)
INVESTMENTS LLC for Rental Unit at)
45 No. Winooski Ave, Apt. 4)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 16, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Charlie Gliserman, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Kiaya Wood and Sabrina Farr were present and testified. Respondent JH2 Investments LLC was represented at the hearing by Jim Healy 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 JH2 Investments LLC is the owner of a rental unit, 45 No. Winooski Avenue, Apt. 4, in the City of Burlington which is the subject of these proceedings. Jim Healy manages the property.
2. Petitioners Kiaya Wood and Sabrina Farr moved into the rental unit with a written lease which ran from January 1, 2020 to May 31, 2020. Monthly rent was \$1380.00.
3. Petitioners paid a security deposit of \$1380.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. When petitioners written lease ended on May 31, 2020, they remained living in the apartment. In July, respondents requested that petitioners sign a new lease if they wanted to

continue living in the apartment; respondents also informed them that the monthly rent would increase. In the absence of signing a new lease, respondents noted that the tenancy would terminate August 31, 2020. Petitioners chose not to enter into a new lease.

5. Petitioner Kiaya Wood vacated the apartment by August 31, but petitioner Sabrina Farr stayed in the unit until September 1, 2020. There was conflicting testimony and evidence relating to when petitioners were to be out of the apartment. Phone conversations between Kiaya Wood and Sharon Harkness, and Kiaya Wood and Jeff Harkness, (submitted into evidence by petitioners) indicate they gave petitioners permission to vacate the apartment on September 1 by 9 a.m. However, in an August 30 email from Jim Healy to petitioners, he clearly tells petitioners they must be out of the apartment by August 31 since new tenants were moving in on September 1, 2020.

6. On or about September 21, 2020, respondents sent a check made payable to Kiaya Wood in the amount of \$737.42. The memo portion of the check indicates it is the return of the security deposit. Respondents did not send a written statement itemizing deductions from the deposit. However, in an email, Jim Healy told petitioners if they remained in the unit after August 31, they would forfeit their deposit. Jim Healy testified the amount withheld was for hotel bills for the new tenants (because they weren't able to move into the unit as Sabrina Farr didn't vacate on August 31) and the cost to have someone else do the apartment turnover (due to Sabrina Farr's delay in moving out).

7. Petitioners argued that the failure to return the deposit was willful. Petitioners argued that they didn't receive a breakdown of the damages after requesting one and they were told the new tenants weren't moving in until September 1.

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. 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). Respondents did not provide a written statement itemizing deductions from the deposit and they did not return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondents forfeited the deposit.

11. If the failure to return a deposit with a written statement within 14 days of the vacate date 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 the deposit was willfully withheld because they asked for a breakdown of the deductions, but never got one. In addition, they were told new tenants were moving into the apartment on September 1. The Board concludes there is insufficient evidence to show that the deposit was willfully withheld.

12. While the Board has already concluded that respondents forfeited the right to withhold the deposit, we also note that the deductions taken from the deposit were not proper. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant. Respondents withheld part of the deposit for hotel bills for the new tenants because they weren't able to move into the apartment due to Sabrina Farr not vacating, and the cost to have someone present at the apartment for turnover. However, neither of those deductions are contemplated under city ordinance as being proper deductions from a security deposit.

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 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 Kiaya Wood and Sabrina Farr are entitled to recover from respondent JH2

Investments, LLC, the following amounts:

- a) \$642.58 of the principal amount of the security deposit improperly withheld after September 15, 2020;
- b) Interest in the amount of \$2.58 on the entire deposit for the period January 1, 2020 to September 15, 2020; and
- c) Additional interest of \$0.004 per day from September 16, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Pena
Olivia Pena