



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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Jesse Zboray
Full Circle Property Management

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

**In re: Request for Hearing of JESSE ZBORAY)
Regarding Withholding of Security)
Deposit by CONNOLLY QUALIFIED) Security Deposit Appeal
DOMESTIC TRUST for Rental Unit at)
168 So. Champlain Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2022; the meeting was held remotely via Zoom. Board Members Charlie Gliserman, Olivia Taylor and Josh Wronski were present. Petitioner Jesse Zboray was present and testified. Respondent Connolly Qualified Domestic Trust was represented at the hearing by Stephanie Gilbert 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 Connolly Qualified Domestic Trust is the owner of a rental unit, 168 So. Champlain Street, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert from Full Circle Property Management (“Full Circle”) manages the property.
2. Petitioner Jesse Zboray moved into the rental unit on June 1, 2021 under the terms of a written lease. Monthly rent was \$1650.00.
3. Petitioner paid a security deposit of \$1650.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 25, 2022.

5. On June 6, 2022, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement informed petitioner that \$140.00 of the deposit was being withheld for cleaning charges. Respondent returned \$1510.99 of the deposit to petitioner.

6. Interest in the amount of \$0.99 was credited to the deposit.

7. Petitioner disputed the deduction of \$140 for cleaning charges. Petitioner thoroughly cleaned the apartment before vacating it, following the move-out checklist provided by respondent, including pulling out the refrigerator and cleaning underneath it. In addition, petitioner wiped everything down and cleaned out the cabinets and refrigerator. After petitioner moved out, a woman hired by respondent spent 4 hours in the apartment cleaning. The cleaning invoice indicated the baseboards and wall were dusted and wiped down so they could be painted. In addition, the invoice indicated there were items in the kitchen drawers and cabinets that needed to be removed so they could be wiped down. Lastly, the invoice indicates the oven needed to be sprayed and the floor under the oven and refrigerator were very dirty. Videos of the apartment submitted by petitioner indicate it was clean and in good condition.

8. Petitioner also argued that the deposit was willfully withheld and he requested double damages. Petitioner argued that respondent had acted in bad faith during his entire tenancy. He argued that the cleaning invoice was fabricated. Stephanie Gilbert denied willfully withholding the deposit and believed she was very fair with respect to the deduction made. Ms. Gilbert testified that she paid a woman to clean the apartment so that it was ready for the next tenant; Ms. Gilbert testified that she has no interest in paying a vendor if she doesn't have to.

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). Proper notice was provided.

12. Based on the evidence and testimony, the Board concludes that the deduction of \$140.00 for cleaning was not proper as the cleaning done was part of normal wear and tear.

13. Petitioner argued that the deposit was willfully withheld. 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). Petitioner has also moved for double damages, alleging respondents' 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 concludes the deposit was not willfully withheld. Full Circle hired a woman to clean the apartment after petitioner moved out, believed the need to clean was attributable to petitioner and believed the deduction was very fair and reasonable.

Order

Accordingly, it is hereby ORDERED:

14. Petitioner Jesse Zboray is entitled to recover from respondent Connolly Qualified Domestic Trust the following amounts:

a) \$140.00 of the principal amount of the deposit improperly withheld after June 8, 2022;
and

b) Additional interest of \$0.001 per day from June 9, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 17th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Josh Wronski
Josh Wronski