



HOUSING BOARD OF REVIEW

City of Burlington

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**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 8/11/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Ethan Waxman
Dale & Michelle Rocheleau, HG Properties LLC

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

**In re: Request for Hearing of ETHAN WAXMAN)
Regarding Withholding of Security Deposit by) Security Deposit Appeal
HG PROPERTIES LLC for Rental Unit at)
47 So. Williams St, Unit 203)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 20, 2020; the meeting was held electronically via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Ethan Waxman was present and testified. Dale Rocheleau and Michelle Rocheleau were present and testified on behalf of respondent HG Properties LLC. Also testifying was Hollie Waxman.

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 HG Properties LLC is the owner of a rental unit, 47 So. Williams St., Unit 203, in the City of Burlington which is the subject of these proceedings. Dale Rocheleau and Michelle Rocheleau manage the property.
2. Petitioner Ethan Waxman and his roommate moved into the rental unit with a written lease which ran from June 1, 2019 to May 24, 2020. Monthly rent was \$1650.00.
3. The amount of the security deposit was \$1650.00; petitioner’s share of the deposit was \$825.00. Petitioner and his roommate were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 26, 2020.

5. On June 3, 2020, respondent sent petitioner a statement in accordance with ordinance requirements. Said statement itemized one deduction of \$285.00 in late fees from the deposit. Interest in the amount of \$0.83 was credited to the deposit. Petitioner and his former roommate each received a check in the amount of \$682.91. Petitioner disputed the deduction.

6. Both parties testified with respect to the deduction of \$285.00 for late fees. Respondent attributed the charge to petitioner's rent being late in July 2019, August 2019, September 2019, November 2019, January 2020 and March 2020. The late charges for April and May, 2020, were waived due to Covid-19. Respondent charged \$15 per day for each day after the first of the month that rent was late in accordance with the lease provision on rent; the charge is for respondents' time to make additional trips to his post office box to check for rent. Dale Rocheleau set up a post office box to receive rent checks believing it was more secure. One of the co-signors struck out that language in the lease with respect to late fees and initialed the change, but respondent testified they did not agree to the change. There is no dispute that petitioner's rent was late on several occasions. Petitioner argued that late fees were not allowed under state law and they were never informed that late fees were accruing. Dale Rocheleau argued that the late fee is part of unpaid rent, and thus, allowed under state law. In addition, Hollie Waxman testified that respondent requested she use Venmo to pay the rent and she had difficulty using Venmo causing rent to be late on occasion. Petitioner's rent was always paid using Venmo. Dale Rocheleau testified that Venmo was merely an option for paying rent, not a requirement. The lease provides rental payments can be mailed or rent can be made via Venmo or PayPal.

Conclusions of Law

7. 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.

8. 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.

9. 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). Timely notice was provided.

10. City ordinance and state law allow a landlord to retain all or part of a security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant, for nonpayment of rent, for nonpayment of utilities and for expenses required to remove abandoned articles from the rental unit. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b). The only deduction taken from the deposit in this case is the \$285.00 deduction for

late fees. Petitioner argued that late fees were not allowed under state law while respondent argued they were allowed. Respondent also argued that late fees are part of unpaid rent. The Board concludes late fees are not one of the enumerated reasons for the withholding of a deposit under city ordinance or state law. In addition, the Board concludes late fees are not part of unpaid rent as argued by respondent. Therefore, a security deposit cannot be withheld for late fees. In addition, even if late fees were allowed to be withheld from a security deposit, the Board concludes there was no cost to the landlord when petitioner's rent was late in this case.

Respondent argued that when petitioner's rent was late he had to make additional trips to the post office to see if there was a rent check from petitioner. However, petitioner was paying rent via Venmo so there was no reason for respondent to check the post office box. In addition, respondent set up the post office box to receive rent checks (and presumably other mail related to their rental units) as part of their way of doing business. Therefore, the cost of going back and forth to the post office was part of respondent's cost of doing business.

Order

Accordingly, it is hereby ORDERED:

11. Petitioner Ethan Waxman is entitled to recover from respondent HG Properties LLC the following amounts:

a) \$285.00 of the principal amount of the security deposit improperly withheld after June 9, 2020; and

b) Additional interest of \$0.002 per day from June 10, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 11th day of August, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman