



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

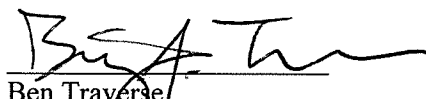
Enclosed is a copy of the “ Findings of Fact, Conclusions of Law and Order” of the Burlington Housing Board of Review.

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 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Julie Fitzpatrick
Bryan Brosseau

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of JULIE)
FITZPATRICK Regarding Withholding) CITY OF BURLINGTON
Of Security Deposit by BRYAN) HOUSING BOARD OF REVIEW
BROSSEAU for Rental Unit at 110)
Cottage Grove, Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Julie Fitzpatrick was present and testified. Respondent Bryan Brosseau was also present and testified. Also appearing and testifying was Beth Brosseau.

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 Bryan Brosseau is the owner of a rental unit, 110 Cottage Grove, Apt. 2, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Julie Fitzpatrick moved into the rental unit with a written lease which ran from April 2, 2008 to March 31, 2009. Thereafter, petitioner rented on a month-to-month basis.
3. Petitioner paid a security deposit of \$950.00 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 December 1, 2015.
5. On December 8 or 9, 2015, respondent sent a written statement to petitioner, by first-class mail, informing her that the deposit was being withheld for damages. The statement did not include notice to petitioner of her right to request a hearing before this Board within 30 days of receipt of the statement. Respondent did not include notice of petitioner's right to request a hearing because he was unaware of the city's requirement to do so. Petitioner disputed the withholding of her deposit and

requested that respondent be ordered to return double the amount of the security deposit, arguing that it was willfully withheld.

6. Interest was not credited to the security deposit.

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 mailed. 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).

10. 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.¹ *See Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March

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

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.

11. 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). Petitioner argued that her deposit was willfully withheld. Although the written statement was inadequate in that it failed to provide notice of petitioner's right to request a hearing before this Board, respondent did not fail to send a statement within 14 days. Therefore, respondent is not liable for double the amount of the deposit.

12. Petitioner is 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:

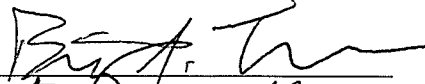
13. Petitioner Julie Fitzpatrick is entitled to recover from respondent Bryan Brosseau the following amounts:

a) \$968.55, the principal amount of the security deposit plus interest improperly withheld after December 15, 2015; and

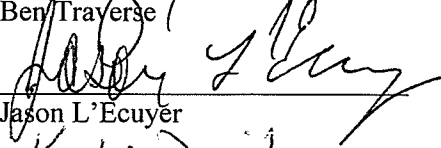
b) Additional interest of \$0.006 per day from December 16, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of January, 2016.

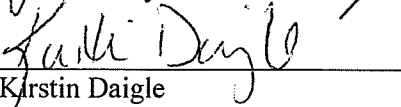
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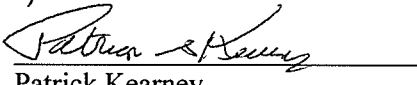
Ben Travers



Jason L'Ecuyer



Kirstin Daigle



Patrick Kearney