

STATE OF VERMONT

SUPERIOR COURT  
Chittenden Unit

CIVIL DIVISION  
Docket No. 886-10-16 Cncv

<p>107-109 MANSFIELD AVE LLC, Appellant,</p> <p>v.</p> <p>CHARLIE DEFE0, NILE WALWYN, AND SKYLER DAVIS, Appellees.</p>	<p>VERMONT SUPERIOR COURT FILED</p> <p>APR - 6 2017</p> <p>CHITTENDEN UNIT</p>
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RULING ON APPEAL FROM HOUSING BOARD OF REVIEW

This is an appeal from the Findings of Fact, Conclusions of Law, and Order issued by the Burlington Housing Board of Review on September 12, 2016 regarding a dispute between Tenants Charlie DeFeo, Nile Walwyn, and Skyler Davis and Landlord 107-109 Mansfield Ave LLC. Defeo and Walwyn did not appear at the hearing conducted on November 15, 2016. Skyler Davis represented himself. Landlord was represented by its property manager, Jim Ross. Interested party City of Burlington was represented by Richard Haesler, Esq.

Background

The City of Burlington's Housing Board of Review made the following findings: Jim Ross manages a property on Mansfield Avenue in Burlington for Landlord. Tenants rented the unit from June 1, 2014 to May 25, 2016 for \$3,500, and paid a security deposit of \$3,500. Tenants vacated the unit on May 28, 2016 but did not provide forwarding addresses.

On June 11, 2016, Landlord sent itemized statements of deductions to Tenants at the address of the unit. The letters were returned to Landlord by the postal service. On June 17, 2016, Ross sent an email to Davis with the statement of withholding attached. Landlord's statements did not inform Tenants of their opportunity to request a hearing before the Board within 30 days of receiving the statements.

The Board applied the City's security deposit ordinance, Burlington Code of Ordinances § 18-120, and 9 V.S.A. § 4461(c), which require Landlord to return the deposit with 14 days with a statement of deductions. The City ordinance additionally requires notice of Tenants' right to appeal to the Housing Board of Review. The Board concluded that Landlord failed to meet the requirements and therefore forfeit the security deposit. The Board ordered Landlord to return the entire deposit to Tenants with interest. Landlord now appeals.

## Discussion

Appeals from decisions of the Housing Board of Review under 24 V.S.A. § 5006 are governed by V.R.C.P. 74. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt. 598. The court reviews the decision of the Board “on the record” rather than by conducting a new hearing. Id. (citing State Dep’t of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 294–95 (1980)). Unless the court determines that it must take evidence or appoint a referee for proper disposition of the matter, the court reviews the record of the hearing and exhibits acted upon by the Board. *See* 24 V.S.A. § 5006(b); V.R.C.P. 74(d).

Landlord argues that it “met all the criteria required.” Landlord contends that the reason the Tenants did not receive the certified mail that included “the Burlington Housing Board of Review[’]s telephone number and instructions” is that Tendants did not provide a forwarding address. Landlord asserts that Ross orally communicated to Davis that Davis could appeal the security deposit withholding, and the Tenants did in fact appeal to the Board.

Vermont law requires that “[a] landlord shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from the date on which the landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date.” 9 V.S.A. § 4461(c). The Burlington ordinance mirrors these requirements, but additionally requires that the “written statement shall also inform the tenant of the opportunity to request a hearing before the Burlington housing board of review within thirty (30) days of receipt of the landlord’s written statement.” Burlington Code of Ordinances § 18-120(c).

The Court has listened to the recording of the Board’s hearing and reviewed the evidence that Landlord submitted. Landlord submitted no evidence to show that the written statements included the statement regarding Tenants’ opportunity to appeal to the Board. The Board found that the written statement did not meet the ordinance’s requirements. Based on this finding, the Board correctly concluded that Landlord forfeit all of its security deposit. *See* Burlington Code of Ordinances § 18-120(c) (“If a landlord fails to return the security deposit *with a statement* within fourteen (14) days, the landlord forfeits the right to withhold any portion of the security deposit.”) (emphasis added). In this case, the statement was not complete because it lacked notice of the opportunity to appeal to the Board.

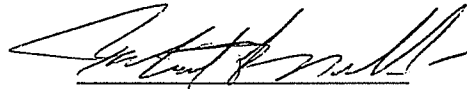
Even if Landlord orally informed Tenant of the opportunity to appeal, and even if Tenants’ filing of an appeal to the Board demonstrates that they received notice, the Board correctly concluded that Landlord may not withhold any of the deposit. The Vermont Supreme Court has ruled that when a landlord does not strictly comply with notice requirements in cases involving security deposits, the landlord forfeits the security deposit. *See In re Soon Kwon*, 2011 VT 26, ¶ 13–19, 189 Vt. 598; *see also* 9 V.S.A. § 4451(1) (defining actual notice, for Vermont’s landlord tenant statutes, as written notice). Because Burlington’s ordinance on security deposits, like Vermont’s statute on security deposits, is a consumer protection law designed to protect tenants, the Board is correct to construe the requirements strictly.

The Court notes that the Board's decision was based on the absence of the statement regarding opportunity to appeal to the Board. The fact that the letters were returned to sender because Tenants did not provide forwarding addresses was not the basis of the Board's decision that Landlord did not meet the notice requirements. *See Burlington Code of Ordinances, § 18-120(c)* ("The landlord shall comply with this section by hand-delivering or mailing the statement and any payment required to the last-known address of the tenant, which may be the rental unit if no forwarding address has been provided.").

Order

The Board's Findings of Fact, Conclusions of Law, and Order of September 12, 2016 are *affirmed*.

Dated this 6<sup>th</sup> day of April, 2017.



Robert A. Mello  
Superior Court Judge