



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

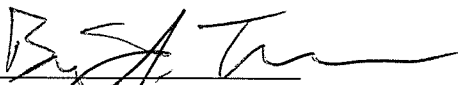
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/5/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: James Ajith
Eric Hamel, c/o Bissonette Properties

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

**In re: Request for Hearing of JAMES AJITH)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by ERIC HAMEL for Rental) HOUSING BOARD OF REVIEW
Unit at 8 Haswell Street, Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 21, 2015. Board Chair Ben Traverse presided. Board Members Jason L'Ecuyer and Patrick Kearney were also present. Petitioner James Ajith was present and testified. Respondent Eric Hamel was represented at the hearing by Kristina and Shane Bissonette. Also appearing and testifying as a witness for petitioner was Brian Pine.

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 Eric Hamel is the owner of a rental unit, 8 Haswell Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. Kristina and Shane Bissonette manage the property.
2. Petitioner James Ajith and his family moved into the rental unit on December 1, 2011 under the terms of a written lease. Monthly rent was \$1400.00.
3. Petitioner paid a security deposit of \$1400.00 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 November 10, 2015.
5. On November 21, 2015, respondent sent a written statement, by certified mail, to petitioner in conformance with ordinance requirements. Said statement itemized deductions totaling \$1758.88. Interest in the amount of \$54.83 was credited to the deposit. Petitioner disputed all the deductions except a \$155.00 deduction for November rent.

6. Both parties testified as to deductions made for patching walls (\$199.94) and repainting the apartment (\$675.00), which totaled \$874.94 on the itemized statement. Respondent provided photographs taken upon petitioner's move out, including one photograph depicting a large hole in one wall. Petitioner acknowledged that the hole was likely put there by his child(ren). The photographs also showed walls with a number of black scuff marks on them. The apartment was painted just prior to petitioner moving into it. Petitioner and his family, including a spouse and five children, lived in the apartment for 4 years. Respondent did not repaint the apartment at any point during petitioner's tenancy.

7. Both parties testified concerning trash removal and dump fees which appeared as a \$250.00 deduction on the itemized statement. Petitioner admitted that when he moved out, he left several pieces of furniture, including sofas, a table, mattresses, a bed frame, and a desk, outside on the greenbelt and around the trash containers. Petitioner testified that other tenants had agreed to take the discarded items; however, after remaining in the greenbelt for several days, the items were removed by respondent to comply with city requirements.

8. Both parties testified concerning a cleaning fee which appeared as a \$150.00 deduction on the itemized statement. The invoice for cleaning services indicates respondent paid Meghan Boucher \$150.00 for cleaning services described as "turn over"; the invoice indicates she spent 5 hours cleaning at a rate of \$30.00/hour. However, the itemized statement indicates there was a total of 6 hours spent cleaning with 1 hour not being charged to petitioner. Petitioner testified to his own cleaning efforts prior to moving out and presented photographs generally depicting a tidy, but aged apartment. Respondent's photographs were more detailed, though, and established that some areas, such as the cabinets and floors, required additional cleaning.

9. Both parties testified concerning a missing smoke detector which appeared as a \$75.00 deduction on the itemized statement. There was no dispute that at the end of the tenancy, the smoke detector was down and respondent had to replace it. Petitioner denied taking down the smoke detector and opined that it may have been taken down when an exterminator treated the apartment for bedbugs. Shane Bissonette refuted this notion. Respondent admitted, however, that the apartment passed its most

recent annual inspection by the Burlington Housing Authority, indicating that all smoke detectors were present at that time, which predated the exterminator treatment. The Board finds that this fact supports petitioner's contention that the smoke detector was removed by the exterminator.

10. Both parties testified concerning a missing kitchen cabinet door which appeared as a \$55.00 deduction on the itemized statement. Petitioner admitted that the cabinet door was present when he moved into the apartment. He was unable to account for when or why the cabinet door was removed.

11. Both parties testified concerning broken windows and screens which appeared as a \$70.00 deduction on the itemized statement. Whereas petitioner opposed these deductions, respondent's photographs clearly depict broken windows and screens that needed to be repaired or replaced.

12. Both parties testified concerning a broken door which appeared as a \$125.00 deduction on the itemized statement. One of respondent's photographs showed an interior door with a number of holes in it.

13. Respondent deducted \$3.94 from the deposit for the certified mailing fee.

CONCLUSIONS OF LAW

14. 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.

15. 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.

16. 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). Here, timely notice was sent.

17. Based on the evidence, the Board concludes the deductions for patching holes in the walls (\$199.94), for trash removal (\$250.00), for the missing cabinet door (\$55.00), for the broken windows and screens (\$70.00), and for the broken door (\$125.00), were proper. Petitioner was unable to establish it was unreasonable for respondent to apply the security deposit to these damages, which were clearly established by the evidence.

18. The Board concludes the deduction for repainting the apartment was not proper. Petitioner and his large family, seven people in all, lived in the apartment for 4 years. As noted above, respondent did not repaint the apartment at any point during petitioner's tenancy. Given the type and color of paint utilized by respondent, repainting after a 4-year tenancy must be characterized as a part of normal wear and tear.

19. Similarly, respondent may not cover the entirety of its cleaning expenses with the security deposit, as some of its cleaning was attributable to mere normal wear and tear after a 4-year tenancy. Respondent's invoice for cleaning indicates the cleaner spent 5 hours cleaning the apartment. The Board concludes that only 2 ½ hours of that time can be attributed to cleaning that went beyond normal wear and tear. Therefore, a reasonable deduction for cleaning was \$75.00.

20. Finally, the Board concludes the deductions for the smoke detector and certified mail fee were not proper. The Board credits petitioner's testimony on the smoke detector and concludes that he sufficiently met his burden of establishing it was not attributable to him. The certified mail fee is not a proper deduction under the security deposit ordinance, particularly since the law no longer mandates the use of certified mail. See, Minimum Housing Code Sec. 18-120

ORDER

Accordingly, it is hereby ORDERED:

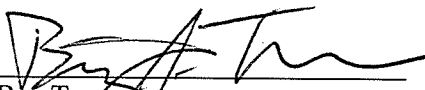
21. Petitioner James Ajith is entitled to recover from respondent Eric Hamel the following amounts:

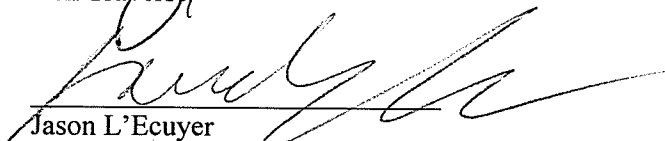
a) \$524.89 of the principal amount of the security deposit improperly withheld after November 24, 2015; and

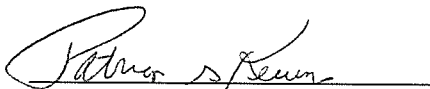
b) Additional interest of \$0.004 per day from November 25, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 5th day of January, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers


Jason L'Ecuyer


Patrick Kearney