



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

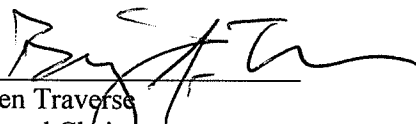
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/5/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Rachel Alberico & Drew Adamczyk
Thomas W. Dowe, Jr

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

In re: Request for Hearing of RACHEL)
ALBERICO and DREW ADAMCZYK)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by THOMAS W. DOWE,) HOUSING BOARD OF REVIEW
JR. for Rental Unit at 71 N. Winooski)
Avenue, #5)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on March 19, 2018. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Josh O’Hara and Steven Goodkind were also present. Petitioners Rachel Alberico and Drew Adamczyk were present and testified. Respondent Thomas W. Dowe, Jr. was also present and 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 Thomas W. Dowe, Jr. is the owner of a rental unit, 71 N. Winooski Avenue, #5, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Rachel Alberico and Drew Adamczyk moved into the rental unit on May 13, 2013.
3. Petitioners paid a security deposit of \$850.00 to respondent. Petitioners were to receive back their security deposit at the end of the tenancy minus any amounts withheld for damages.
4. Petitioners vacated the apartment on February 1, 2018.
5. Respondent sent a statement to petitioners, within 14 days of the date they vacated the apartment, indicating that \$818.00 of the deposit was being withheld for rent and damages. The statement did not inform petitioners of their opportunity to request a hearing before this Board to dispute the withholding of their deposit. Respondent returned \$51.28 of the deposit to petitioners.
6. Interest in the amount of \$19.28 was credited to the deposit.

7. On January 13, 2018, Drew Adamczyk wrote a check for \$400.00 to respondent; the check was cashed by respondent on January 20. The parties were in dispute as to what the check was for and the disposition of the security deposit. Although both parties believed they had an agreement, each party had a different understanding so that there was no “meeting of the minds”, and consequently no agreement.

8. Petitioners argued that respondent’s failure to return the security deposit was willful and requested that respondent be ordered to return double the amount withheld. Petitioners believed that respondent’s text messages indicate he was being malicious with respect to withholding the deposit. In addition, petitioners believed respondent misled them with respect to the \$400.00 they gave him.

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. 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).

12. 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 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.

13. Petitioners argued that respondent willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). It is clear that the parties had a different understanding with respect to the disposition of the security deposit; however, the Board concludes that respondent's withholding was not willful.

ORDER

Accordingly, it is hereby ORDERED:

14. Petitioners Rachel Alberico and Drew Adamczyk are entitled to recover from respondent Thomas W. Dowe, Jr. the following amounts:

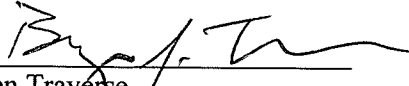
a) \$818.00 of the principal amount of the security deposit improperly withheld after February 15, 2018; and

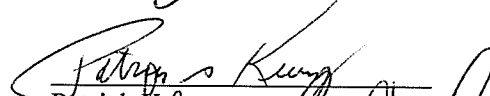
b) Additional interest of \$0.006 per day from February 16, 2018 until such date as the amount improperly withheld is returned to petitioners.

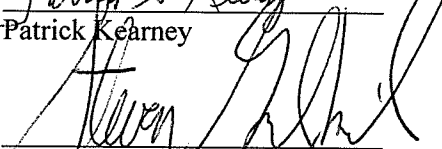
Dated at Burlington, Vermont this 5th day of April, 2018.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind


Josh O' Hara