



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 5/17/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Stephanie Andrews
Vincent Bassett

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

**In re: Request for Hearing of STEPHANIE)
 ANDREWS Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by VINCENT BASSETT) HOUSING BOARD OF REVIEW
 for Rental Unit at 22 Decatur Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 17, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Stephanie Andrews was present and testified. Respondent Vincent Bassett 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 Vincent Bassett is the owner of a rental unit, 22 Decatur Street, in the City of Burlington which is the subject of these proceedings. Respondent purchased the property in June, 2016 at which time petitioner's security deposit was transferred to him.
2. Petitioner Stephanie Andrews moved into the rental unit on December 1, 2014 under the terms of a written lease.
3. Petitioner paid a security deposit of \$1100.00 to the previous property owner; the deposit was transferred to respondent at the closing on the property. Petitioner was to receive back her security deposit at the end of the tenancy minus any amounts withheld for damages.
4. Petitioner vacated the apartment on February 28, 2017.
5. On March 18, 2017, respondent sent petitioner a statement itemizing deductions from the deposit. Although the itemized damages exceeded the amount of the deposit, respondent returned \$250.00 to petitioner for repairs he planned on doing before he assessed the damages. Respondent's statement did not include notice of petitioner's right to appeal the withholding to this Board.

6. Petitioner disputed the timeliness of respondent's statement and argued that her deposit was willfully withheld. Petitioner argued that respondent's failure to respond to her text messages about the deposit evidenced his willful withholding of the deposit. Respondent countered that he kept petitioner informed about his progress assessing the damages; respondent was coordinating an inspection of the property with the previous owner of it since he did not know what damage may have been preexisting when petitioner moved into the unit. Respondent also testified that he had the paperwork ready to be mailed when the strong winter storm occurred in Burlington and he was unable to get out to mail the statement.

7. Interest was not credited to the deposit.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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). Respondent's statement was not sent in a timely manner: petitioner moved out of the unit on February 28, 2017 and respondent sent the statement on March 18, 2017.

11. 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 return the deposit within 14 days and 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.

12. Both city ordinance and state law provide that if the failure to return a 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 respondent's failure to send the statement on time was willful. Although she and respondent communicated about the status of the deposit and its return, petitioner argued that the statement and deposit could have been hand-delivered to her; in addition, she believed that had she not kept checking in about her deposit, respondent would not have returned it when he did. Respondent countered that his actions were not willful: he kept in touch with petitioner about the deposit and the strong winter storm was a factor in the delay. The Board concludes the delay in sending the statement and partial deposit was not willful; respondent made every effort to return the deposit on time, and kept in touch with petitioner about what was happening.

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

13. City ordinance requires that a security deposit be held by a landlord in an interest-bearing account, with an interest rate at least equivalent to a current Vermont bank passbook savings rate.

Minimum Housing Code Sec. 18-120(a)(1).

ORDER

Accordingly, it is hereby ORDERED:

14. Petitioner Stephanie Andrews is entitled to recover from respondent Vincent Bassett the following amounts:

a) \$850.00 of the principal amount of the security deposit improperly withheld after March 14, 2017;

b) Interest in the amount of \$6.28 on the entire deposit for the period December 1, 2014 through March 14, 2017; and

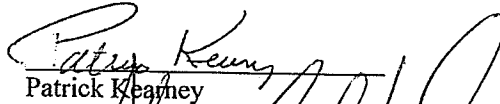
c) Additional interest of \$0.006 per day from March 15, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 17 of May, 2017.

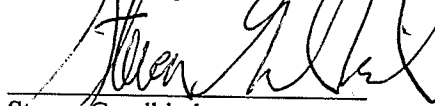
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



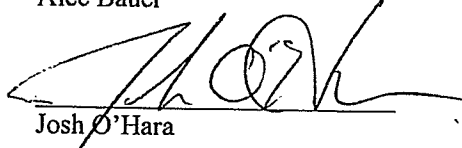
Patrick Kearney



Steven Goodkind



Alec Bauer



Josh O'Hara