



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

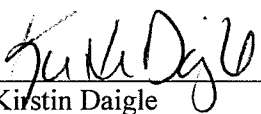
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 2/9/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Kirstin Daigle
Board Chair

cc: Taylor Bickford & Jake Dryden-Jaffe
Frank Marcou

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

In re: Request for Hearing of TAYLOR)
BICKFORD and JAKE DRYDEN-JAFFE)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by FRANK MARCOU for) HOUSING BOARD OF REVIEW
Rental Unit at 169 ½ B North St)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 5, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioners Taylor Bickford and Jake Dryden-Jaffe were present and testified. Respondent Frank Marcou was present and testified. Appearing and testifying as witnesses were Ken Sanders and Lisa Bickford.

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 Frank Marcou is the owner of a rental unit, 169 ½ B North Street, in the City of Burlington which is the subject of these proceedings.
2. On October 12, 2014, petitioners Taylor Bickford and Jake Dryden-Jaffe signed a written lease to rent the apartment. Jake Dryden-Jaffe moved into the rental unit that night even though work was still being done in the apartment. Petitioners agreed that workers would have access in the apartment to do the work. The parties disputed the date by which the repairs were supposed to be complete: petitioners testified that the parties verbally agreed to the work being completed on October 14, two days after the written lease was executed, while respondent testified that the parties agreed to the repairs being completed within a couple of weeks. What is undisputed, though, is that even after a couple of weeks had gone by, the kitchen still required significant cleaning and repairs, and the shower surround needed to be replaced.

3. Petitioners paid a security deposit of \$1400.00 to respondent. Monthly rent was \$1400.00. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners, dissatisfied with the time it was taking to make the repairs, notified respondent on October 23, via email, that they would be breaking their lease and moving out of the apartment by November 1. Respondent and petitioners' parents (who were co-signors of the lease) proceeded to email back and forth about whether or not the apartment was habitable and whether or not respondent's workers had been denied access to the apartment. Petitioners claim the apartment was not habitable and claim they never denied anyone access to the apartment. However, there were times when a worker was scheduled to be at the apartment, but did not show up—for example, on one occasion, respondent's carpenter called and asked to come to the apartment with no notice; petitioners arranged for the carpenter to come the next day, but he never arrived.

5. Petitioners moved out on October 31, 2014. On November 13, respondent sent a written statement to petitioners, by certified mail, in conformance with the requirements of State law and local ordinances. Said statement indicated \$840.00 of the deposit was being withheld for prorated rent for November; respondent charged petitioners for 18 days of rent for November, as he was able to rent the apartment to new tenants until November 19. Accordingly, the amount of the security deposit returned to petitioners was \$561.00.

6. Interest in the amount of \$1.00 was credited to the deposit.

7. Petitioners argue that the apartment was not ready on the date by which work was supposed to be completed and that it was uninhabitable. Respondent argued that petitioners moved in knowing that the apartment was not ready and hampered work being done in the apartment by denying his workers access to the apartment.

8. The Board finds that the apartment was not ready to be occupied when petitioners moved into the apartment, petitioners did not deny access to the apartment and the work that still needed to be done in

the apartment could not have been completed in the 2 day time period petitioners state was the agreed upon date.

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 certified 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). Timely notice was provided.

12. "[I]n the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation." *Hilder v. St. Peter*, 144 Vt. 150, 160 (1984). As is applicable here, "a tenant who enters into a lease agreement with knowledge of any defect in the essential facilities cannot be said to have assumed the risk, thereby losing the protection of the warranty. Nor can this implied warranty of habitability be waived by any written provision in the lease or

by oral agreement.” *Id.* When a landlord is found in breach of the implied warranty of habitability, “[t]he tenant will be liable only for the reasonable rental value [if any] of the property in its imperfect condition during his period of occupancy.” *Id.* at 161 (quotation omitted).

13. A valid lease agreement existed between the parties; petitioners acted in breach of that lease agreement when they moved out of the rental unit, and, generally speaking, that entitled respondent to retain petitioners’ security deposit for unpaid rent. Based on the evidence presented, however, the Board concludes respondent breached the implied warranty of habitability—he should not have allowed any tenant to move into the apartment until all the necessary work was completed. The Board is tasked with reviewing the “reasonableness” of a landlord’s security deposit deductions. Minimum Housing Code Sec. 18-120(e). Respondent’s breach of the implied warranty of habitability rendered it unreasonable for him to require petitioners to pay rent in full through November 18, 2014. The Board concludes that a reasonable deduction would have been \$420.00.

ORDER

Accordingly, it is hereby ORDERED:

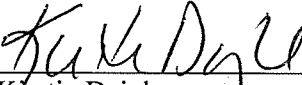
14. Petitioners Taylor Bickford and Jake Dryden-Jaffe are entitled to recover from respondent Frank Marcou the following amounts:

a) \$420.00 of the principal amount of the security deposit improperly withheld after November 14, 2014; and


b) Additional interest of \$0.003 per day from November 15, 2014 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 9th day of February, 2014.⁵

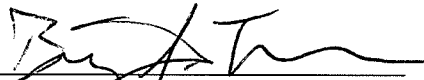
CITY OF BURLINGTON
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Kirstin Daigle

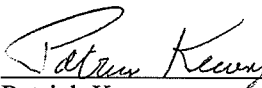


Jason L'Ecuyer



Ben Traverse

Loyal Ploof



Patrick Kearney