



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**

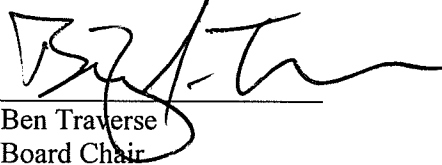
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 11/7/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Robert & Rachel Blevins  
Ann Lang

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

**In re: Request for Hearing of RACHEL and     )  
ROBERT BLEVINS Regarding                     ) CITY OF BURLINGTON  
Withholding of Security Deposit by Ann ) HOUSING BOARD OF REVIEW  
Lang for Rental Unit at 47 Greene St.     )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on October 16, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Alec Bauer were also present. Petitioner Rachel Blevins was present and testified. Respondent Ann Lang 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 Ann Lang was the owner of a rental unit, 47 Greene Street, in the City of Burlington which is the subject of these proceedings. Respondent was the owner of the property during petitioners' entire tenancy. The house is a duplex comprised of 2 rental units.
2. Petitioners Rachel and Robert Blevins moved into the rental unit with a lease which ran from September 1, 2015 to July 31, 2016; thereafter, they rented on a month-to-month basis. Monthly rent was \$1275.00.
3. Petitioners paid a security deposit of \$1275.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. On August 16, 2017, respondent informed petitioners she was selling the house. Petitioners told respondent they had hoped to stay in the apartment for another year while they saved money to buy a house. Rachel Blevins testified that her husband, Robert Blevins, concerned about being able to find an apartment for October or November, asked respondent if the deposit would be returned if petitioners found a new apartment for September 1; respondent assured Mr. Blevins there was no reason for her to keep the deposit. On August 17, 2017, Mr. Blevins texted respondent and again asked about the return of

the deposit if they moved out by September 1. Respondent replied, “No you won’t have trouble getting the security deposit back....” Petitioners also mentioned the possibility of the buyer keeping them on as renters. Respondent disputed petitioners’ recollections and testified that she told Robert Blevins she needed 30 days notice of their vacating the unit and that he would need to pay September’s rent.

5. On August 21, 2017, petitioners found a place to live and told respondent, by text, they were leaving August 31. Respondent replied, “Ok.” Petitioners testified that they would not have moved out on August 31 if they hadn’t been assured by respondent that the deposit would be returned.

6. On August 25, 2017, respondent signed a purchase and sale agreement for the property. When the buyer asked about moving people into the apartments before closing, respondent denied their request.

7. Petitioners vacated the apartment on August 31, 2017.

8. On or about September 8, 2017, respondent sent a written statement to petitioners in accordance with ordinance requirements indicating the entire deposit was being withheld for September’s unpaid rent. Interest in the amount of \$12.81 was credited to, and returned, to petitioners. The property was conveyed to its new owner on September 29, 2017.

### **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). Proper notice was provided.

12. Respondent withheld the security deposit for unpaid rent for September 2017. The parties disputed whether there was an agreement with regard to the return of the security deposit if petitioners moved out by September 1. The Board credits the testimony and evidence presented by petitioners. Respondent's claim that the deposit would be returned as long as rent for the month of September was paid was not supported by the evidence. Text messages between the parties support petitioners' contention that they were told the return of the deposit would not be a problem; none of the messages reference paying rent for September as a condition of the return of the deposit. Indeed, the evidence indicates that respondent asked petitioners the courtesy of not disclosing their arrangement to other tenants at the rental property, who were separately required to pay rent through the month of September.

13. Respondent argued that she should be permitted to withhold unpaid rent for September 2017 as petitioners failed to provide adequate notice of the intention to terminate their tenancy. Minimum Housing Code Sec. 18-29a(b) (“[N]o tenant may terminate a residential tenancy without providing actual notice to the landlord at least two (2) rental periods in advance of the termination date specified in such notice.”). It was respondent, however, who made the decision to terminate petitioners' tenancy. Less than two weeks after informing petitioners of the sale, the rental property was under contract. Just one month thereafter, the rental property was conveyed to its new owner. While it is not material to the outcome of this matter, it bears noting that respondent may have actually violated petitioners' right to adequate notice of the intention to terminate their tenancy. Minimum Housing Code Sec. 18-29a(a) (“In any case where there is no written rental agreement, no landlord may terminate a tenancy of rental housing without cause unless at least 90 (ninety) days' advance written notice to the tenant(s) has been

provided.”). Under these circumstances, the Board concludes the deduction for unpaid rent was not reasonable in light of respondent’s unequivocal assurances that the deposit would be returned.

**ORDER**

Accordingly, it is hereby ORDERED:


14. Petitioners Rachel and Robert Blevins are entitled to recover from respondent Ann Lang the following amounts:

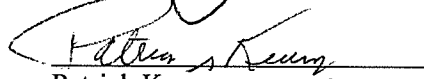
a) \$1275.00 of the principal amount of the security deposit improperly withheld after September 14, 2017; and

b) Additional interest of \$0.009 per day from September 15, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 7<sup>th</sup> of November, 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse

  
\_\_\_\_\_  
Patrick Kearney

  
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Alec Bauer