



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

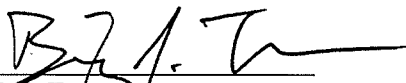
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traversa
Board Chair

cc: Nick Boyle
Samantha Knight
Jennifer Ovitt, Appletree Bay Property Management

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

**In re: Request for Hearing of NICK BOYLE)
 And SAMANTHA KNIGHT Regarding)
 Withholding of Security Deposit by) CITY OF BURLINGTON
 Nineteen Twenty One S. Willard St LLC) HOUSING BOARD OF REVIEW
 For Rental Unit at 19-21 So. Willard St,)
 Apt. 5)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Nick Boyle and Samantha Knight were present and testified. Respondent Nineteen Twenty One S. Willard St LLC was represented by Jennifer Ovitt who testified on their behalf. Also appearing and testifying as witnesses were Kit Burkich and William Burrell.

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 Nineteen Twenty One S. Willard St LLC is the owner of a rental unit, 19-21 So. Willard Street, Apt. 5, in the City of Burlington which is the subject of these proceedings. Jennifer Ovitt from Appletree Bay Property Management manages the property.
2. Petitioners Nick Boyle and Samantha Knight moved into the rental unit on May 1, 2015 under the terms of a written lease.
3. Petitioners paid a security deposit of \$900.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on December 18, 2015; rent was paid through December 31, 2015. The parties provided conflicting testimony as to when respondent knew petitioners had vacated. The Board specifically finds the vacate date to be December 31, 2015. The Board found Jennifer Ovitt to be credible as to the date on which respondent knew the apartment was empty.

5. On January 13, 2016, respondent sent a written statement to petitioners' forwarding addresses in conformance with ordinance requirements. Said statement itemized one deduction of \$1150.00 for the extermination of bed bugs. Interest in the amount of \$0.45 was credited to the deposit.

6. On November 3, 2015, Samantha Knight's father informed Jennifer Ovitt by email that petitioners, who were seen by physicians for insect bites, discovered bed bugs in their apartment. Mr. Knight requested that respondent have the apartment inspected and cleaned. On November 4, PestPro inspected petitioners' apartment and found 3 bed bugs in the unit; the next day, the rest of the apartments in the building were checked and no bed bugs, or evidence of them, were found in the other units. PestPro treated petitioners' apartment with thermal remediation.

7. Respondent withheld petitioners' entire deposit because they believed the bed bugs in the apartment were attributable to petitioners: the building had no previous bed bugs and bed bugs were only found in petitioners' apartment. Petitioners believed the bed bugs were coming in through the walls.

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 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). Proper notice was provided.

11. The entire deposit was withheld for the cost to have PestPro eliminate bed bugs found in petitioners' apartment. Sec. 18-107 of the Minimum Housing Code provides that owners of a dwelling unit are responsible for the extermination of any insects, except when the infestation is in one dwelling unit only and is the sole result of a single occupant's action **as determined by a code official** (emphasis added). Respondent provided no testimony or evidence that a code official had determined that the bed bugs were the result of petitioners' action. Therefore, the Board is required to conclude that the cost to exterminate the bed bugs was respondent's responsibility.

ORDER

Accordingly, it is hereby ORDERED:

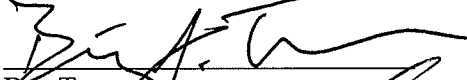
12. Petitioners Nick Boyle and Samantha Knight are entitled to recover from respondent Nineteen Twenty One So. Willard St LLC the following amounts:

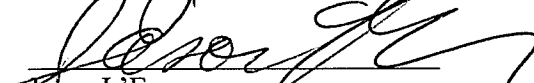
a) \$900.45, the principal amount of the security deposit, plus interest, improperly withheld after January 14, 2016; and

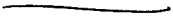
b) Additional interest of \$0.006 per day from January 15, 2016 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 20th day of April, 2016.

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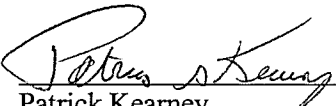

Ben Traverse


Jason L'Ecuyer



Kirstin Daigle

I respectfully dissent from the majority's decision.



Patrick Kearney

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