



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**

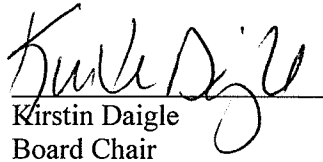
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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: Erin Brennan & James Morrell  
Thomas Matthews

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

**In re: Request for Hearing of ERIN BRENNAN )  
and JAMES MORRELL Regarding )  
Withholding of Security Deposit by ) CITY OF BURLINGTON  
THOMAS MATTHEWS for Rental Unit at ) HOUSING BOARD OF REVIEW  
185 N. Willard Street )**

**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 Erin Brennan and James Morrell were present and testified. Respondent Thomas Matthews was also present. Also appearing and testifying as a witness was Ray Davis.

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 Matthews is the owner of a rental unit, 185 N. Willard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Erin Brennan and James Morrell moved into the rental unit under the terms of a written lease which ran from June 1, 2013 to May 30, 2014; thereafter, they rented on a month to month basis. Monthly rent was \$1450.00.
3. Petitioners paid a security deposit of \$1450.00 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 November 1, 2014.

5. On November 17, 2014, respondent sent a written statement to petitioners, by first-class mail, informing them that part of their security deposit was being withheld. Respondent's statement itemized deductions totaling \$559.76. The amount of the deposit returned to petitioners was \$870.24.<sup>1</sup>

6. Interest was not credited to the deposit.

### **CONCLUSIONS OF LAW**

7. 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.

8. 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.

9. 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).<sup>2</sup> 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).

10. 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

---

<sup>1</sup> The Board notes that the deductions taken (\$559.76) and the amount returned (\$870.24) totals \$1430, not \$1450 (the amount of the deposit).

<sup>2</sup> An amendment to Sec. 18-120(c) took effect on January 7, 2015 and landlords are now required to comply with this section by "hand-delivering or mailing the statement and any payment required to the last-known address of the tenant"—in effect, the "certified mail" requirement has been removed. The amendment was not intended to apply retroactively, though, and since all dates relevant to this matter fell before January 7, 2015, the Board is required to apply the version of the Minimum Housing Code in effect at the time.

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. 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 hand-deliver or send by certified mail an itemized statement 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.

11. Petitioners are entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

### **ORDER**

Accordingly, it is hereby ORDERED:

12. Petitioners Erin Brennan and James Morrell are entitled to recover from respondent Thomas Matthews the following amounts:

a) \$579.76 of the principal amount of the security deposit improperly withheld after November 15, 2014;

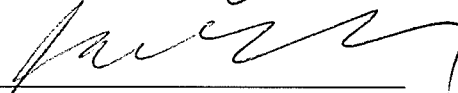
b) Interest of \$5.30 on the entire amount of the deposit for the period June 1, 2013 through November 15, 2014; and


c) Additional interest of \$0.004 per day from November 16, 2014 until such date as the amount improperly withheld is returned to petitioners.


DATED at Burlington, Vermont this 9<sup>th</sup> day of February, 2014<sup>5</sup>.

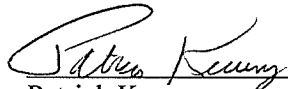
CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Kirstin Daigle

  
Jason L'Ecuyer

  
Ben Traverse

  
Loyal Ploof

  
Patrick Kearney