



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

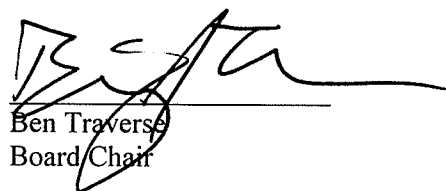
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/4/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Trent Bucknam  
11 S. Union Street LLC

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

**In re: Request for Hearing of BEN MARTIN, )  
TRENT BUCKNAM, JARED SIMONS and )  
CALEB JENKINSON Regarding ) CITY OF BURLINGTON  
Withholding of Security Deposit by 11 ) HOUSING BOARD OF REVIEW  
SOUTH UNION ST LLC for Rental Unit )  
At 11 South Union Street )**

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

The above-named hearing came before the Housing Board of Review on September 19, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Shawn Tao<sup>1</sup> and Steven Goodkind were also present. Petitioners Trent Bucknam and Ben Martin were present and testified. Respondent 11 South Union St LLC was represented by Matt and Kim Donaldson, both of whom 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 11 South Union Street LLC is the owner of a rental unit, 11 South Union Street, in the City of Burlington which is the subject of these proceedings. Matt and Kim Donaldson manage the property. In addition, Matt Donaldson is the registered agent for the corporation.
2. Petitioners moved into the rental unit with a lease which ran from June 1, 2015 to May 30, 2016. Monthly rent was \$3,000.00.
3. Petitioners paid a security deposit of \$3,500.00 (which included a \$500 pet deposit) 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 May 24, 2016.

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<sup>1</sup> Shawn Tao resigned from the Housing Board of Review effective 9/28/16.

5. On June 7, 2016, respondent sent a written statement to petitioners in conformance with ordinance requirements. Said statement itemized deductions totaling \$1,293.95. Interest in the amount of \$35.00 was credited to the deposit. In addition, there was a credit of \$483.85 for pro-rated rent for May 2016. Respondent returned \$2,724.90 of the deposit to petitioners.

6. The only deduction in dispute is for the stove - a chip in the glass cooktop and a broken handle – which appeared as a \$568.54 deduction on the itemized statement. The deduction was based on an estimate to replace the top and the handle; however, respondent ended up replacing the stove on the recommendation of the appliance dealer. Respondent paid \$658.00 for a new stove. Petitioners argued that the chip in the stovetop occurred after they moved out of the apartment. Kim Donaldson went into the apartment the day after petitioners moved out and found the chip in the stove top and the door handle dangling from it, both of which are evidenced in photos she took at that time. Petitioners did not dispute that the handle was dangling, but claimed the damage was part of normal wear and tear. The stove was in the apartment when respondent purchased the property in December 2010; a sticker on the stove indicated it was manufactured in 2007.

7. Petitioners designated Trent Bucknam as their representative to receive the decision of this Board, as well as the return of any monies due to them.

#### **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). Timely and proper notice was provided.

11. During petitioners' tenancy, the stove top and door handle on the stove were damaged. The damage was attributable to petitioners and it was beyond normal wear and tear. Therefore, it was proper to withhold a portion of the deposit for the damage. Rather than repair the stove, it made more sense economically for respondent to replace it. However, the stove was 9 years old. Consequently, the Board concludes a reasonable deduction for the damage, taking into account depreciation, is \$250.00.

**ORDER**

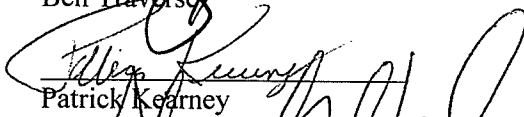
Accordingly, it is hereby ORDERED:

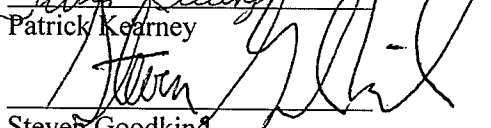
12. Petitioner Trent Bucknam (on behalf of all the tenants) is entitled to recover from respondent 11 South Union Street LLC \$318.54, the principal amount of the deposit improperly withheld after June 7, 2016.

Dated at Burlington, Vermont this 4<sup>th</sup> day of October, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Patrick Kearney

  
Steven Goodkind