



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

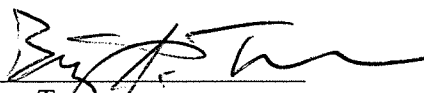
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/20/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Carly Capasso
Kendre Guinane
William & Karla Russell

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

**In re: Request for Hearing of CARLY)
CAPASSO and KENDRE GUINANE)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by KARLA and WILLIAM) HOUSING BOARD OF REVIEW
RUSSELL for Rental Unit at 66 North)
Willard Street, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 5, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Carly Capasso and Kendre Guinane were present and testified. Respondent Karla Russell was also present.

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. Respondents Karla and William Russell are the owners of a rental unit, 66 N. Willard Street, Apt. 1, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Carly Capasso and Kendre Guinane moved into the rental unit with a written lease which ran June 1, 2014 to May 31, 2015.
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 May 31, 2015.
5. On Monday, June 15, 2015, respondent sent a statement, by certified mail, to petitioners informing them that part of the deposit was being withheld for damages. Respondents returned \$945.00 of the deposit to petitioners.
6. Interest was not credited on 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 mailed to the tenant's last-known address. 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).

10. Based on the evidence, the Board concludes that respondents failed to return the deposit with a statement within 14 days, and therefore, forfeited the right to withhold any portion of the security deposit. At hearing, respondents argued that the 14-day period to return the deposit with a statement ended on a Sunday, when the post office was closed. It is well-settled, though, that in the absence of a statute or ordinance excluding weekends and holidays, or extending the time when the last day for computing time in cases like this one falls on a Sunday, actions taken the following day come too late. See In re Grievance of Roy, 147 Vt. 403, 405 (1986).

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

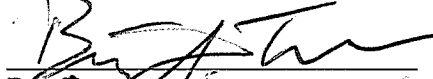
Accordingly, it is hereby ORDERED:


12. Petitioners Carly Capasso and Kendre Guinane are entitled to recover from respondents Karla and William Russell the following amounts:

- a) \$505.00 of the principal amount of the security deposit improperly withheld after June 14, 2015;
- b) Interest in the amount of \$3.75 on the entire deposit for the period June 1, 2014 to June 14, 2015; and
- c) Additional interest of \$0.003 per day from June 15, 2015 until such date as the amount improperly withheld is returned to petitioners.


DATED at Burlington, Vermont this 20th day of October, 2015.

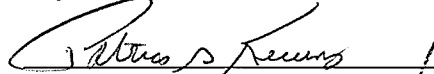
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