



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 10/17/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Ben Traverse  
Board Chair

cc: Marcy Clare Cecil  
Noah Paradis  
Leigh Ann Cash  
Don Harrington

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

**In re: Request for Hearing of MARY CLARE )  
CECIL, NOAH PARADIS and LEIGH ANN ) CITY OF BURLINGTON  
CASH Regarding Withholding of ) HOUSING BOARD OF REVIEW  
Security Deposit by DON HARRINGTON )  
for Rental Unit at 28 East Avenue )**

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

The above-named hearing came before the Housing Board of Review on September 18, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Josh O'Hara and Alec Bauer were also present. Petitioners Mary Clare Cecil, Noah Paradis and Leigh Ann Cash were present and testified. Respondent Don Harrington, although notified of the hearing and the opportunity to be heard, was not 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. Respondent Don Harrington is the owner of a rental unit, 28 East Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Mary Clare Cecil, Noah Paradis and Leigh Ann Cash moved into the rental unit with a lease which ran from June 1, 2017 to May 29, 2017.
3. Petitioners paid a security deposit of \$2100.00 to respondent; each of them paid \$700.00 by separate check 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 29, 2017.
5. On July 11, 2017, respondent sent petitioner Mary Clare Cecil a statement of deductions from the deposit. That statement itemized deductions totaling \$933.05. Interest in the amount of \$4.00 was credited to the deposit. Respondent returned \$1170.95 of the deposit to petitioners by one check made

payable to all of them, even though petitioners had requested separate checks and the deposit was paid to respondent in separate checks.

6. Petitioners disputed the deductions and the timeliness of the notice. In addition, petitioners argued that respondent willfully withheld the deposit; the basis of their claim was that respondent knew the law about the return of the deposit, and therefore, the failure to return it in a timely manner was willful. In a series of emails between Mary Clare Cecil and respondent, the parties discussed the return of the deposit; on June 27, 2017 respondent wrote that a check had been sent out on June 1. However, on June 28, the parties discovered that respondent had sent the check to the wrong address whereupon petitioners requested that a new check be sent to the correct address.<sup>1</sup> On July 11, 2017, a new check was sent to petitioner Marcy Clare Cecil at the correct address.

#### **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 mail. Minimum Housing Code Sec. 18-120(c). If a

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<sup>1</sup> The Board notes that that the emails submitted by petitioner may not be complete since some of the exchanges seem a bit out of context.

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). If the failure is willful, the landlord shall be liable for double the amount wrongfully withheld. 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 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.<sup>2</sup> *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 return the deposit to petitioners within 14 days of the date they moved out. The evidence before the Board indicates a check and statement were sent to petitioners on July 11, 2017. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Both city ordinance and state law provide that if the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that the withholding of the deposit was willful on the basis of respondent's failure to return the deposit when he knew the law and understood it. Although respondent did not appear at the hearing, there is evidence indicating he was responsive when petitioners informed him that the check was sent to the wrong address. Therefore, the Board concludes the failure to return the deposit within 14 days was not willful.

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<sup>2</sup> An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

**ORDER**

Accordingly, it is hereby ORDERED:

12. Petitioner Mary Clare Cecil is entitled to recover from respondent Don Harrington the following amounts:

- a) \$311.02 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

13. Petitioner Noah Paradis is entitled to recover from respondent Don Harrington the following amounts:

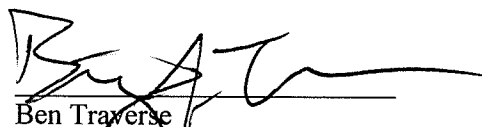
- a) \$311.02 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

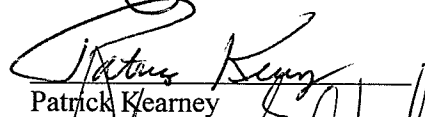
14. Petitioner Leigh Ann Cash is entitled to recover from respondent Don Harrington the following amounts:

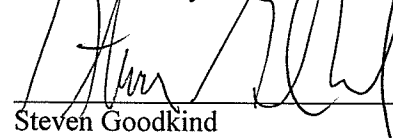
- a) \$311.01 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

Dated at Burlington, Vermont this 17<sup>th</sup> of October, 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Patrick Kearney

  
Steven Goodkind



Alec Bauer



Josh O'Hara