



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.

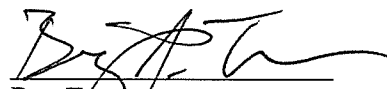
Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (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

9/9/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Bradley Chandler
Whiteville Properties

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

**In re: Request for Hearing of Brendan Hunt,)
Corbin Hill and Bradley Chandler)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by Whiteyville Properties, LLC) HOUSING BOARD OF REVIEW
for Rental Unit at 22 Summit St, #1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 7, 2017. Board Members Josh O’Hara and Patrick Kearney were appointed to serve as Hearing Officers for the hearing pursuant to City Ordinance provisions. Petitioners Brendan Hunt, Corbin Hill and Bradley Chandler were present and testified. Susanna Hunt, mother of Petitioner Brendan Hunt was present and also testified. Respondent Whiteyville Properties, LLC was represented at the hearing by Eric Hanley who 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 Whiteyville Properties is the owner of 22 Summit Street – Unit 1 which was rented as a rental unit under a lease contract which is the subject of these proceedings. Eric Hanley manages the property.
2. Petitioner Brendan Hunt, Corbin Hill and Bradley Chandler were the tenants in the rental unit with a lease which ran from 6/1/2015 to 5/25/2017. There was uncontested testimony that Corbin Hill was not on the lease until October 25, 2016, but that he resided at the Unit from September 1, 2016 and that he withheld rent until he was named on the lease on November 1, 2016 at which time he paid all rent due and his check was accepted and cashed.
3. Petitioners paid a security deposit of \$2325.00. Rent for the 12 month lease was \$2325.00 per month. Under the terms of the lease, petitioner(s) was to receive back the security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners moved out of the rental unit on May 25, 2016.

5. Respondent withheld all \$2325.00 of the security deposit and issued a reimbursement of \$23.25 for the interest accrued on the security deposit during the tenancy along with an Itemized Notice to Tenant of Withholding of Security Deposit. The itemized deductions were:

- a. Late Rent Fees - \$475 (19 x \$25)
- b. Trash Removal & Tires - \$500
- c. Cleaning Charge - \$175
- d. Legal Fees – Eviction Proceeding - \$375
- e. Extra Tenant Charge - \$800 (\$100 x 8 months)

6. The parties agreed that the itemized list of deductions from the security deposit and the check were issued in accordance with legal requirements.

7. Petitioners disputed all \$2325 deducted from the security deposit.

8. Respondent testified that late fees of \$25 were assessed for late payment of rent on 19 occasions, amounting to a total of \$475. The itemized form reflects that respondent assessed \$50 late fees and reduced the fees to \$25 as an additional entry – no explanation was offered for this accounting method. There was testimony from both sides as to use of a drop box and where the checks were or were not to be delivered. There was a provision in the lease made for late fees for payment more than five days late (\$50). There was no testimony from respondent articulating any costs, expenses or hardship incurred as a result of late fees.

9. Respondent testified that he assessed petitioners a \$500 fee for trash removal based on a pro-rata apportionment to their unit of the overall expenses incurred by him for 22 Summit Street property trash removal arising from the accumulation of total trash left by all of units collectively in the move-outs from at that address at that time. Receipts were submitted into evidence. There was no testimony or other evidence presented specifically linking petitioners to any of the trash in question.

10. Petitioners testified that they had done a walk-through of the unit with respondent at the end of the lease term and had received assurance from respondent that the unit was in order and that

everything was “fine.” They understood that to mean that no deductions would be taken for cleaning or damage to the unit. A “Move Out” Inspection form was introduced as evidence and showed that all categories of the inspection were checked as okay versus not okay except the Kitchen – Clean category which was unchecked but noted “some cleaning.” Petitioners stated that they did not believe that any further cleaning was necessary after the move out inspection. Respondent testified that the cleaning was for 3 ½ hours of work at \$50 per hour for a total of \$175. The lease submitted into evidence contained a provision (#24) that petitioners were responsible for having the unit professionally cleaned upon their moving out. There was no testimony that professional cleaning was utilized.

11. Respondent testified to Legal Fees to initiate an eviction in the amount of \$375, apparently initiated when Corbin Hill was not paying rent because he had not been placed on the lease, and apparently then no longer pursued upon the October 25, 2016 addition of Corbin hill to the lease and his payment of back rent at that time.

12. Respondent testified that there was a deduction from the security deposit of \$800 for having a fourth tenant in the unit for 8 months at a fee assessed at \$100 per month. Petitioners testified that they maintained a futon couch for overnight guests, but at no point did anyone beside the three of them lease or reside in the apartment.

13. Petitioners testified that respondent’s withholdings were knowingly and willfully improper and that an award as permitted by law of double damages should be made. Petitioners testified that the facts and circumstance of the case evidenced that respondent knowingly and willfully made the improper withholdings of their security deposit.

CONCLUSIONS OF LAW

14. 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.

15. 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.

16. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120 (c), includes language mandating the manner for providing a departed tenant with a written statement itemizing all deductions withheld from a security deposit; specifically it states that "[t]he landlord shall comply with this section by hand-delivering or sending by certified mail the statement and any payment required to the last-known address of the tenant, which may be the rental unit if no forwarding address has been provided."

17. Based on the evidence presented, the Board finds that respondent was not entitled to withhold the full amount of the security deposit; because:

a) Late Rent Fees – The Board finds that there was no testimony or other evidence of hardship, cost or loss which warranted said deduction. The Board finds this deduction of \$475 to be improper and will order reimbursement of \$475 for the improper deduction.

b) Trash Removal & Tires - The Board finds that the charges for trash removal and tires were improper. Respondent provided no testimony or evidence to establish that any of the costs that he incurred for trash removal were specifically attributable to petitioners. Petitioners testified that there was a specific agreement that respondent would allow them to return to pick up winter tires valued at \$600 dollars from the back porch. Petitioners testified that respondent disposed of the tires in violation of their oral agreement. Respondent testified that he had nothing to do with the disappearance of the tires and he was not responsible for that loss. The Board notes that the itemized withholding referenced tires in the trash removal deduction. The jurisdiction of the Board is limited to determining whether security deposit deductions were proper. Petitioners are able to pursue other legal remedy (e.g. small claims court) if they so choose. The Board finds the deduction of \$500 for trash removal and tires were improper and will order reimbursement of \$500 for this improper deduction.

c) Cleaning - The Board finds that “some cleaning” was appropriate given the terms of the lease and the testimony and evidence presented. The Board finds, however, that charging \$50.00 per hour for cleaning was excessive and not reasonable. The Board finds based on the evidence presented that a charge of \$125 instead of \$175 for cleaning would be reasonable therefore and will order reimbursement of \$50.00 for improper deduction.

d) Legal Fees - The Board finds that there was no basis for a deduction from a security deposit for the \$375 for legal fees based on the testimony and evidence presented and finds said deduction improper. The Board will order reimbursement of \$375 for this improper deduction.

e) Extra Tenant Charge – The Board finds that there was no credible testimony or evidence presented to justify an Extra Tenant Charge at any point in the lease term. The \$800 deduction for Extra Tenant charges was improper. The Board will order reimbursement of \$800 for this improper deduction.

ORDER

Accordingly, it is hereby ORDERED:

18. Petitioners Bradley Chandler, Brendan Hunt and Corbin Hill are entitled to recover from respondent Whiteyville Properties the following amounts:

a) \$2200.00 of the principal amount of the security deposit improperly withheld after June 8, 2017; and

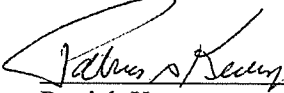
b) Additional interest of \$0.01 per day from June 9, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 9TH of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara
Hearing Officer


Patrick Kearney
Hearing Officer