



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 10/7/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Christina Chandler
Lucy Circe

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

**In re: Request for Hearing of CHRISTINA)
 CHANDLER Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by LUCY CIRCE for) HOUSING BOARD OF REVIEW
 Rental Unit at 43A N. Champlain St.)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 21, 2015. Board Chair Kirstin Daigle presided. Board Members Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Christina Chandler was present and testified. Respondent Lucy Circe was also present. Also appearing and testifying as witnesses were Linda Chandler, Kevin Hicks and Diane Circe.

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 Lucy Circe is the owner of a rental unit, 43A N. Champlain Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Christina Chandler moved into the rental unit with a lease which ran from June 8, 2014 to June 8, 2015. Monthly rent was \$850.00.
3. Petitioner paid a security deposit of \$850.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on June 7, 2015.
5. On June 19, 2015, respondent sent a written statement and list of itemized deductions, by certified mail, to petitioner's forwarding address informing her that the deposit was being withheld. Respondent also sent the statement to Kevin Hicks as co-signer of the lease. Interest was not credited to the deposit.

6. Both parties testified concerning photographs which appeared as a \$44.10 deduction on the written statement. Respondent charged petitioner for the photographs she took after petitioner moved out because Kevin Hicks was unavailable to complete a walk-through of the apartment at the end of the tenancy.

7. Both parties testified concerning a missing broiler pan which appeared as a \$38.73 deduction on the written statement. The parties offered conflicting testimony as to whether or not the broiler pan was in the apartment at the beginning of the tenancy. Respondent maintained it was there while petitioner testified it was not. The Board finds petitioner's testimony regarding the broiler pan to be more credible.

8. Both parties testified concerning plumbing charges which totaled \$475.95 on the written statement. After petitioner moved out of the apartment, respondent called her plumber because the bathroom sink was clogged. On June 10, 2015, the plumber replaced the faucet drain and tried to snake the drain, but was unable to completely clear the clog. Roto-Rooter went to the apartment on June 11 at which time they augured the sink line 30 feet and were able to clear whatever was clogging the drain. Respondent's plumber returned after Roto-Rooter to put the sink and drain back together. Respondent's plumber charged a total of \$175.00 for his services and Roto-Rooter charged \$300.95. Petitioner did not inform respondent that the sink was slow to drain because she thought it was natural for a rental unit sink to become backed up.

9. Both parties testified concerning the bathroom sink and vanity which totaled \$449.02 on the written statement. At the end of the tenancy, the sink had scratches and marks on it which respondent believed were caused by petitioner's cat. Respondent purchased a new vanity top with a sink for \$199.02; respondent's plumber estimated that it would cost \$250.00 to install the new vanity top. The plumber's estimate is a flat rate: it does not indicate an hourly rate nor an estimate of the length of time to do the work. The sink was not new when petitioner moved into the apartment.

10. Petitioner did not dispute a \$6.98 deduction to replace the kitchen light. In addition, petitioner agreed to pay for new blinds that were damaged during her tenancy; the cost of the new blinds was \$16.11.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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). Here, timely notice was sent.

14. Based on the evidence, the Board concludes the deductions for the photographs, the broiler pan and 2 plumber calls were not proper. Respondent took photographs of the apartment to document her claim for damages; the Board concludes that taking photographs is not recoverable under the city's security deposit ordinance as deductions from the deposit are for actual damage attributable to the tenant. The cost to unclog the drain and replace the faucet drain was part of normal wear and tear, and thus not a proper deduction from the deposit. Whereas the plumber uncovered a more serious issue that required the use of Roto-Rooter, discussed more fully below, the Board concludes that the plumber would have been called regardless of this additional issue. The record indicates that the plumber spent his time clearing

material that would normally accrue over years of use by multiple tenants. It was unreasonable for respondent to use the security deposit to cover the full cost of a plumber merely because he happened to discover an issue that required additional intervention. The deduction for the broiler pan was not proper as it was not present at the beginning of the tenancy.

15. Based on the evidence, the Board concludes the damage to the sink was attributable to petitioner as it occurred during her tenancy. However, when considering depreciation value, the Board concludes a reasonable deduction for the sink is \$99.51 as the sink was not new when petitioner moved into the apartment. Additionally, the Board concludes a reasonable deduction to replace the vanity and sink is \$150.00 (2 hours of labor at \$75.00/hour). The sink has not been installed yet and the provided estimate is too speculative for the Board to permit its payment in full.

16. Based on the evidence, the Board concludes that the deduction for Roto-Rooter was reasonable. Unlike the plumber, Roto-Rooter solely focused on a clog that went beyond normal wear and tear.

17. 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:

18. Petitioner Christina Chandler is entitled to recover from respondent Lucy Circe the following amounts:


a) \$276.45 of the principal amount of the security deposit improperly withheld after June 21, 2015;

b) Interest in the amount of \$2.18 on the entire deposit for the period June 10, 2014 to June 21, 2015; and

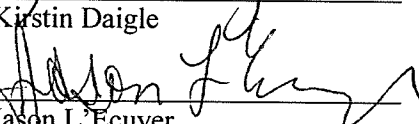
c) Additional interest of \$0.002 per day from June 22, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 7th day of October, 2015.

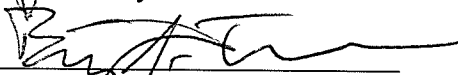
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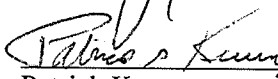
Kirstin Daigle



Jason L. Ecuier



Ben Traverse



Patrick Kearney