



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

Jason L. Ecuyer  
Board Vice Chair

cc: Jon Ciappa  
Packard Lofts LLC

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

**In re: Request for Hearing of JON CIAPPA,     )  
OREN GUTTMANN and ANTHEA             )  
DEXTER-COOPER Regarding             ) CITY OF BURLINGTON  
Withholding of Security Deposit by     ) HOUSING BOARD OF REVIEW  
PACKARD LOFTS LLC for Rental Unit     )  
at 237 North Avenue, Unit 10         )**

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

The above-named hearing came before the Housing Board of Review on October 5, 2015. Board Vice Chair Jason L'Ecuyer presided. Board Members Loyal Ploof, Kirstin Daigle and Patrick Kearney were also present. Petitioners Jon Ciappa and Oren Guttmann were present and testified. Respondent Packard Lofts LLC was represented at the hearing by Tom Getz and Hannah Williams from Summit Property Management.

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 Packard Lofts LLC is the owner of a rental unit, 237 North Avenue, Unit 10, in the City of Burlington which is the subject of these proceedings. Summit Property Management manages the property.
2. Petitioners Jon Ciappa, Oren Guttmann and Anthea Dexter-Cooper moved into the rental unit on June 1, 2013 under the terms of a written lease. Monthly rent was \$2300.00.
3. Petitioners paid a security deposit of \$2300.00 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 June 4, 2015, respondent sent petitioners a statement indicating that \$230.00 of the security deposit was being withheld for painting. The amount of the security deposit returned to petitioners was

\$2070.00. Respondent's statement did not inform petitioners of their right to appeal the withholding of their deposit to this Board.

6. Interest in the amount of \$2.30 was returned to petitioners after the initial statement and check were sent.

7. Both parties testified concerning painting which appeared as a \$230.00 deduction on the itemized statement. Respondent charged petitioners \$230.00 for painting done in the apartment which they believed was beyond normal wear and tear; specifically, Hannah Williams testified that there were a lot of black scuff marks on the walls and doors. Respondent determined what was normal wear and tear based on the painting done in another unit even though that unit was smaller than petitioner's. The total charges for painting done in petitioners' apartment was \$1020; the charge for painting determined to be attributable to normal wear and tear was \$790.00. Thus, respondent determined \$230.00 of the painting was beyond normal wear and tear. Petitioners argued that all of the painting was attributable to normal wear and tear. In addition, petitioners argued that the poor quality of the paint resulted in walls that were easily marked. Petitioners lived in the apartment for 2 years. The Board specifically finds that the painting was part of normal wear and tear as petitioners lived in the apartment for 2 years.

#### **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 mailed to the tenant's forwarding 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).

11. A landlord who decides to retain all or part of a security deposit must comply with the 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 mailed to the tenant's forwarding address. *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 inform petitioners of their appeal rights. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. Even if respondent had fully complied with the notice requirements, the Board would have concluded that the deduction was not proper as the damage was attributable to normal wear and tear.

### **ORDER**

Accordingly, it is hereby ORDERED:

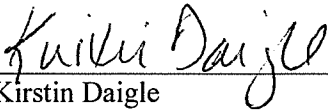
13. Petitioners Jon Ciappa, Oren Guttman and Anthea Dexter-Cooper are entitled to recover from respondent Packard Lofts LLC the following amounts:

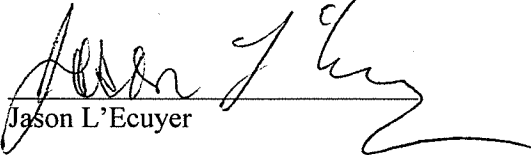
a) \$230.00 of the principal amount of the security deposit improperly withheld after June 14, 2015; and

b) Additional interest of \$0.002 per day from June 15, 2015 until such date as the amount improperly withheld is returned to petitioners.

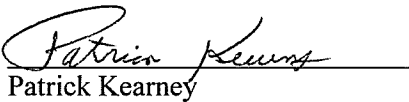
DATED at Burlington, Vermont this 20<sup>th</sup> day of October, 2015.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Kirstin Daigle

  
Jason L'Ecuyer

  
Loyal Ploof

  
Patrick Kearney