



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 7/17/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Meghann Cline
Champlain Housing Trust

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

**In re: Request for Hearing of MEGHANN)
CLINE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by CHAMPLAIN) HOUSING BOARD OF REVIEW
HOUSING TRUST for Rental Unit at)
1201 North Avenue, #201)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 2, 2018. Board Vice Chair Josh O’Hara presided. Board Members Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioner Meghann Cline was present and testified. Respondent Champlain Housing Trust was represented at the hearing by Alyssa Cole 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 Champlain Housing Trust is the manager of a rental unit, 1201 North Avenue, #201, in the City of Burlington which is the subject of these proceedings; Alyssa Cole is a property manager at Champlain Housing Trust. Avenue Apartments Housing is the property owner.
2. Petitioner moved into the rental unit on June 1, 2012. Monthly rent was \$1352.00.
3. The parties disputed the amount of the deposit. Petitioner believed she paid a security deposit of \$1352.00 while respondent claimed the amount of the deposit was \$967.00. Petitioner testified the amount of her deposit has been at issue for over a year and claims she and a former property manager discovered a mistake in her account ledger which was supposed to have been rectified. However, Champlain Housing Trust’s ledgers do not reflect a reconciliation of the deposit amount, but indicate a deposit amount of \$967.00.
4. The lease signed on May 30, 2012 indicates the deposit amount was \$1352.00 while a lease signed on July 25, 2014 indicates “[t]he tenant has deposited \$967.00 with the Landlord.” Petitioner

executed 2 security deposit payment forms to pay the deposit in installments; it is unclear from those documents if all the payments were made.¹

5. Petitioner vacated the apartment on April 10, 2018.

6. On April 10, 2018, respondent sent a letter to petitioner at the address of the rental unit (her last known address at that time) informing her that they were waiting for invoices to repair damage to the unit before returning the deposit. The letter was not forwarded to petitioner at her new address, but it was emailed to her on May 3, 2018 in response to petitioner's email about the return of her deposit.

Respondent received petitioner's forwarding address after the April 10 letter was sent.

7. On May 3, 2018, respondent sent a final account statement to petitioner indicating \$715.00 was being withheld from the deposit: \$300 for damages and \$415.00 for unpaid rent (April 1-10, 2018). Interest in the amount of \$99.24 was credited to the deposit. The final statement indicated that \$351.24 was due to petitioner.

8. Neither the April 10, 2018 letter nor the final accounting sent on May 3, 2018 informed petitioner of her right to request a hearing before this Board to dispute the withholding of part of her deposit.

9. Petitioner argued that the withholding of her deposit was willful. The basis of her argument is that sending the April 10 letter to the wrong address and failing to provide her with a proper accounting of payments made during her tenancy indicated willfulness. Respondent denied that the withholding of part of the deposit was willful. Alyssa Cole testified the April 10 letter informing petitioner about the deposit was generated automatically prior to her receiving petitioner's forwarding address. Ms. Cole provided petitioner with her ledger dating back to October 13, 2013; she had no knowledge of there being a problem with the accounting.

¹ Except for a first payment of \$225.00, the payment amounts are not the same amount as payments noted in petitioner's ledger.

CONCLUSIONS OF LAW

10. 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.

11. 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.

12. 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).

13. 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.² *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

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

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 include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

14. The parties disputed the amount of the security deposit held by respondent. Respondent's records of the amount held for the deposit were inconsistent: some indicated the deposit was paid in full while others indicated otherwise. Petitioner was adamant that she paid the entire amount of the deposit - \$1352 - and that an accounting error occurred. The Board concludes the evidence supports petitioner's position and finds the amount of the security deposit was \$1352.00. The final accounting statement indicated the landlord acknowledged Ms. Cline was due \$351.24, and the Board presumes the landlord returned \$351.24 to Ms. Cline. Therefore, the Board will order that \$1100.00 of the deposit must be returned to petitioner.

15. 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). Petitioner argued that respondent's failure to return the deposit was willful. First, petitioner argued that sending the first statement of withholding to the wrong address evidenced willfulness. However, city ordinance provides the landlord send written notice to the last known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. Minimum Housing Code Sec. 18-120(c). Respondent complied with city ordinance by sending the April 10 letter to petitioner at the address of the rental unit as they did not have her forwarding address at that time. Second, petitioner argued that respondent's failure to provide an accounting for her tenancy also evidenced willfulness. However, Alyssa Cole provided petitioner with her ledgers dating back to October 31, 2013 in response to her request; there is no evidence before the Board to suggest that respondent was not responsive to petitioner's requests for information. Based on the evidence before it, the Board concludes the failure to return a portion of the deposit was not willful.

ORDER

Accordingly, it is hereby ORDERED:

16. Petitioner Meghann Cline is entitled to recover from respondent Champlain Housing Trust the following amounts:

- a) \$1100.00 of the principal amount of the deposit improperly withheld after April 24, 2018; and
- b) Additional interest of \$0.007 per day from April 25, 2018 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 17th of July, 2018.

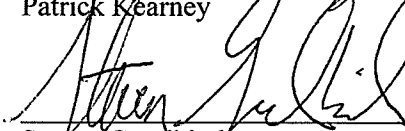
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