

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 6/4/15

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Kirstin Daigle  
Board Chair

cc: Wiley Conte  
W.L. Shriner

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

**In re: Request for Hearing of WILEY CONTE )  
Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by W.L. SHRINER ) HOUSING BOARD OF REVIEW  
for Rental Unit at 37 N. Prospect St, #1 )**

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

The above-named hearing came before the Housing Board of Review on May 4, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Wiley Conte was present and testified. Respondent W. L. Shriner was also present. Appearing and testifying as a witness was Jordan Gullikson.

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 W.L. Shriner is the owner of a rental unit, 37 N. Prospect Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Jordan Gullikson is respondent's property manager.
2. On September 1, 2014, Petitioner Wiley Conte commenced a month-to-month tenancy per the terms of a written lease. Monthly rent was \$530.00—however, the lease provided that petitioner was permitted to take a \$50.00 discount if the apartment was rented by three or more tenants, and an additional \$30.00 if he paid the rent no later than the first of the month.
3. Petitioner paid a security deposit of \$530.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on January 30, 2015.
5. On February 3, 2015, respondent sent a written statement to petitioner in conformance with ordinance requirements. Said statement itemized deductions totaling \$165.00. The amount of the security deposit returned to petitioner was \$365.00.

6. Both parties testified concerning unpaid rent for October, November and December, 2014, which appeared as a \$90.00 deduction on the written statement. During those months, while petitioner took both the \$50.00 discount (for there being three or more tenants) and the \$30.00 discount (for paying no later than the first of the month), respondent claimed to have not received payment until after the first of the month.

7. The parties testified that the procedure for paying rent was to slide a check under respondent's apartment door. Jordan Gullikson would then collect the rent from respondent's apartment on the first and the second of the month. Respondent, with the support of Mr. Gullikson, testified that petitioner did not pay his rent until sometime later in the month. Although Mr. Gullikson mentioned that he kept logs of when rent checks were received, these logs were not offered as evidence. However, respondent was able to demonstrate that he did not deposit petitioner's rent checks until sometime later in the month.

8. Petitioner's testimony regarding when he paid rent was contradictory: although he testified to always putting his rent checks under respondent's door on the first of the month, he also testified that in at least one month, the check may have been delivered a couple days late. Petitioner had no documentary evidence indicating when his rent checks were written or delivered. The absence of such evidence, in addition to petitioner's contradictory testimony, leads this Board to credit respondent's testimony over that of petitioner.

9. Both parties also testified concerning an administrative charge which appeared as a \$25.00 deduction from petitioner's security deposit. Under the lease agreement, petitioner was assigned to a particular bedroom in the apartment. When one of petitioner's roommates moved out, petitioner moved into that room without respondent's prior consent. The administrative charge was a result of that room change, as it required respondent to issue new keys, change the lease terms, and communicate with petitioner about moving his belongings out of the vacated room.

## **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). 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 provided.

13. Based on the evidence, the Board concludes the deduction for unpaid rent was proper since petitioner failed to pay the rent on or by the first of the month in October, November and December, 2014, and was not permitted to take the monthly discount of \$30.00 under the terms of the lease agreement.

14. Based on the evidence, the Board concludes the \$25.00 deduction for changing rooms was reasonable and proper.

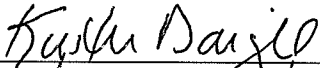
## **ORDER**

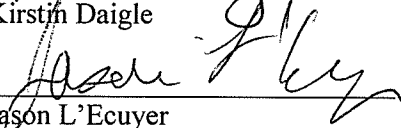
Accordingly, it is hereby ORDERED:

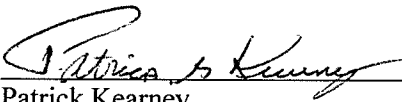
15. Petitioner Wiley Conte's request for relief is DENIED.


DATED at Burlington, Vermont this 4<sup>th</sup> <sup>Time</sup> day of ~~May~~ June, 2015.

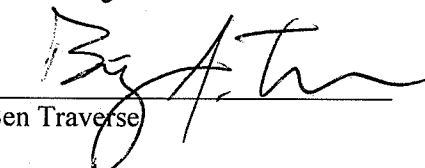
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