



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

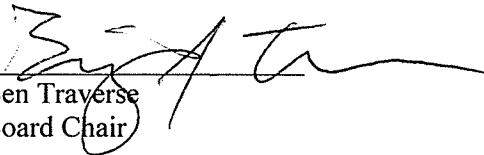
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 6/21/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Augustine Contrero & Lianne Blanchard  
EB North, c/o Bissonette Properties

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

**In re: Request for Hearing of AUGUSTINE )  
CONTRERA and LIANNE BLANCHARD )  
Regarding Withholding of Security ) CITY OF BURLINGTON  
Deposit by EB NORTH for Rental Unit ) HOUSING BOARD OF REVIEW  
At 148 N. Champlain Street, Apt. 1 )**

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

The above-named hearing came before the Housing Board of Review on May 16, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Augustine Contrera and Lianne Blanchard were present and testified. Respondent EB North was represented at the hearing by Brennan Kelley who testified. Also present was Margo Yeadon.

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 EB North is the owner of a rental unit, 148 North Champlain St, Apt. 1, in the City of Burlington which is the subject of these proceedings. Brennan Kelley from Bissonette Properties manages the apartment.
2. Petitioners Augustine Contrera and Lianne Blanchard moved into the rental unit with a lease which ran from August 18, 2014 to May 25, 2015; monthly rent was \$1350.00. On March 10, 2015, petitioners renewed the lease for the period June 1, 2015 to May 25, 2016 with monthly rent increasing to \$1400.00.
3. Petitioners paid a security deposit of \$1350.00 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 February 22, 2016, prior to the end of the lease renewal period.

5. On March 2, 2016, respondent sent a statement to petitioners at their last-known address itemizing deductions from the security deposit. Said statement itemized deductions totaling \$1,603.50. Respondent sent a second statement on April 26, 2016 to petitioners' forwarding address after the apartment was re-rented. The second statement itemized deductions totaling \$883.50. Interest in the amount of \$23.31 was credited to the deposit. Respondent returned \$489.81 of the deposit to petitioners.

6. Both parties testified concerning deductions for the 2015 and 2016 registration fee (\$200) and a certified mail fee (\$3.50) which totaled \$203.50 on the itemized statements. An addendum to the lease executed on August 12, 2014 provides that the tenant will pay the annual Burlington Unit Registration Fee of \$100.00. The addendum further provides that Bissonette Properties will bill the tenant for the fee and the tenant must pay the bill upon receipt. Similarly, the addendum provides that "[t]enants are responsible for paying any certified mail charges of \$3.50 per mailed item."

7. Both parties testified with regard to unpaid rent for April 2016 which appeared as a \$680.00 deduction on the itemized statement. Respondent deducted unpaid rent for April because petitioners terminated the lease early and April 15 was the date new tenants were found to occupy the apartment. As noted above, petitioners executed a lease renewal on March 10, 2015, extending their lease for the period of June 1, 2015 to May 25, 2016. The lease renewal contained language indicating that all other provisions and terms of the original lease would remain in place. Petitioners pointed to Section 5.2 of the original lease, titled "Termination of Tenancy by Tenant," which reads as follows: "...[a]fter the initial term, for tenants in Burlington, two full rental periods written notice is required."

8. Petitioners argued that the "initial term" of their lease expired with the original lease on May 25, 2015 and that, therefore, they were only required to give 2 full rental periods advance notice of terminating the tenancy. In addition, after receiving an email from Bissonette Properties on December 4, 2015 about whether or not they would be renewing the lease on June 1, 2016, petitioners, on December 30, 2015, requested clarification from Bissonette Properties about how much notice was required to terminate the tenancy. The response confirmed that the lease required a minimum notice of 2 rental periods in advance. Based on Bissonette's email and section 5.2 of the lease, on January 12, 2016,

petitioners gave written notice to respondent of their intent to vacate the apartment in February.

Petitioners paid rent through March 2016, notwithstanding the fact that they had vacated the apartment on February 22, 2016.

9. On behalf of respondent, Brennan Kelly argued that when petitioners renewed their lease, the renewal period effectively became a part of the lease's "initial term." Mr. Kelly claimed that the language in section 5.2 of the original lease, permitting termination with 2 rental periods' notice, was only applicable to month-to-month tenancies following expiration of the lease's "initial term."

### **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 certified 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). Proper notice was provided in this instance.

13. Under city ordinance, an owner may retain all or part of the deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant, for nonpayment of rent, for nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility, and for expenses required to remove from the rental unit articles abandoned by the tenant. Minimum Housing Code Sec. 18-120(c). Respondent argued that the lease addendum required petitioners to pay them any certified mailing fees and the apartment registration fee charged by the City of Burlington to landlords, and consequently, they were allowed to withhold part of the deposit if the fees were not paid to them. The Board disagrees. The Board concludes that registration fees and mailing fees are not charges which were contemplated under the ordinance – they are part of the cost of doing business in the city. Therefore, the Board concludes the charges were not proper.

14. Based on the evidence, the Board concludes the deduction for unpaid rent in April was not proper. The language in the original lease and the extension of the lease are ambiguous as to the notice required for a tenant to terminate the tenancy after the initial term of the lease. When petitioners asked for clarification as to how much notice was required, they were informed that the lease required minimum notice of 2 rental payment periods in advance.

**ORDER**


Accordingly, it is hereby ORDERED:


15. Petitioners Augustine Contrera and Lianne Blanchard are entitled to recover from respondent EB North the following amounts:

- a) \$883.50 of the principal amount of the deposit improperly withheld after March 7, 2016; and
- b) Additional interest of \$0.006 per day from March 8, 2016 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 21 day of June, 2016.

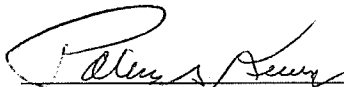
CITY OF BURLINGTON  
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Ben Traverse

  
Jason L'Ecuyer

  
Kirstin Daigle

I respectfully dissent from the majority's decision.

  
Patrick Kearney