



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 1/18/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Ben Traverse  
Board Chair

cc: Leah Daws  
Sonja Fuller

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

**In re: Request for Hearing of LEAH DAWS            )**  
**Regarding Withholding of Security            ) CITY OF BURLINGTON**  
**Deposit by SONJA FULLER for Rental        ) HOUSING BOARD OF REVIEW**  
**Unit at 114 Northshore Drive                )**

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

The above-named hearing came before the Housing Board of Review on December 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Leah Daws was present and testified. Respondent Sonja Fuller was also present and 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 Sonja Fuller is the owner of a rental unit, 114 Northshore Drive, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Leah Daws moved into the rental unit on March 1, 2012 under the terms of a written lease. A copy of the lease was not provided to the Board.
3. Petitioner paid a security deposit of \$1600.00 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 October 31, 2016. Although the keys were not returned on October 31<sup>1</sup>, respondent knew petitioner was out of the apartment on that date.
5. On November 16, 2016, respondent sent a statement to petitioner itemizing deductions from the security deposit. Said deductions totaled \$1465.52. Respondent's statement did not include notice of petitioner's right to contest the withholding of her deposit before this Board.

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<sup>1</sup> The parties disputed the date on which the keys were returned; petitioner testified she left them in the apartment on November 1, while respondent testified they were returned on November 2.

6. Interest in the amount of \$15.74 was credited to the deposit. Respondent returned \$150.22 of the deposit to petitioner. Petitioner disputed the deductions.

### **CONCLUSIONS OF LAW**

7. 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.

8. 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.

9. 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).

10. 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.<sup>2</sup> *See Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March

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

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 include petitioner's appeal rights in the statement and by failing to mail the statement within 14 days of the vacate date.<sup>3</sup> Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

**ORDER**

Accordingly, it is hereby ORDERED:

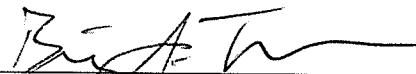
11. Petitioner Leah Daws is entitled to recover from respondent Sonja Fuller the following amounts:

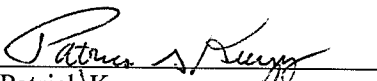
a) \$1465.52 of the principal amount of the security deposit improperly withheld after November 14, 2016; and


b) Additional interest of \$0.01 per day from November 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this <sup>th</sup> 18 of January, 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Travers

  
Patrick Kearney

  
Steven Goodkind

<sup>3</sup> Respondent argued that the vacate date was November 2 (when she claims the keys were returned). Even if the Board agreed and found that was the vacate date, the result would not have changed since respondent's notice was defective.