



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

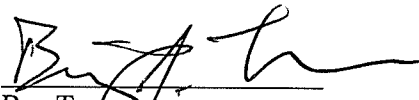
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/12/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers
Board Chair

cc: Charlie Defeo (for all tenants)
107-109 Mansfield Ave LLC

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

**In re: Request for Hearing of CHARLIE)
DEFEO, NILE WALWYN and SKYLER)
DAVIS Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by 107-109) HOUSING BOARD OF REVIEW
MANSFIELD AVE LLC for Rental Unit at)
107 Mansfield Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 22, 2016. Board Vice Chair Patrick Kearney presided. Board Members Shawn Tao and Steven Goodkind were also present. Petitioners Charlie DeFeo, Nile Walwyn and Skyler Davis were present and testified. Respondent 107-109 Mansfield Ave LLC was represented at the hearing by Jim Ross. Also present was Elizabeth Mench.

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 107-109 Mansfield Ave LLC is the owner of a rental unit, 107 Mansfield Avenue, in the City of Burlington which is the subject of these proceedings. Jim Ross manages the property.
2. Petitioners Charlie DeFeo, Nile Walwyn and Skyler Davis moved into the rental unit with a lease which ran from June 1, 2014 to May 25, 2016. Monthly rent was \$3,500.00.
3. Petitioners paid a security deposit of \$3,500.00 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 28, 2016, but did not provide forwarding addresses and did not return the keys to the apartment.
5. On June 11, 2016, respondent sent an itemized statement of deductions from the deposit to petitioners, individually, at the address of the rental unit. All the letters were returned to respondent. On

June 17, 2016, Jim Ross sent an email to Skyler Davis (with a statement of withholding attached) confirming that none of the deposit was being returned due to damages in the unit.

6. Respondent's statement did not inform the tenants of their opportunity to request a hearing before this Board within 30 days of receipt of the statement.

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 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).

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.¹ 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 include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Petitioners are entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioners Skyler Davis, Charlie DeFeo and Nile Walwyn are entitled to recover from respondent 107-109 Mansfield Ave LLC the following amounts:

a) \$3,500.00 of the principal amount of the security deposit improperly withheld after June 11, 2016;

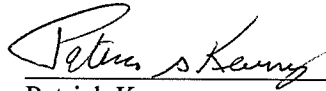
b) Interest in the amount of \$8.95 on the entire deposit for the period June 1, 2015 through June 11, 2016; and

c) Additional interest of \$0.02 per day from June 12, 2016 until such date as the amount improperly withheld is returned to petitioners.


DATED at Burlington, Vermont this 12th day of September, 2016.

¹ An amendment to Sec. 18-120(c) removing the “certified mail” requirement took effect on January 7, 2015.

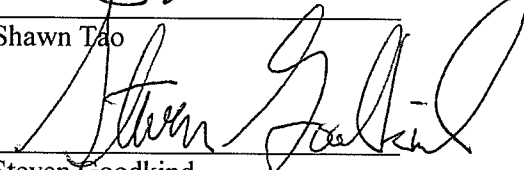
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Patrick Kearney



Shawn Tao



Steven Goodkind