



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 9/9/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Jeffrey Diehl
Whiteville Properties

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

**In re: Request for Hearing of JEFFREY DIEHL)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by WHITEYVILLE PROPERTIES) HOUSING BOARD OF REVIEW
LLC for Rental Unit at 26 Summit St,)
Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 21, 2017. For purposes of expedition Board Members Josh O'Hara and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter. Petitioner Jeffrey Diehl was present and testified. Respondent Whiteyville Properties LLC was represented at the hearing by Eric Hanley who testified. Also appearing and testifying was Tyler Rivard.

Upon consideration of the evidence and the applicable law, the Hearing Officers make the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent Whiteyville Properties LLC is the owner of a rental unit, 26 Summit Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. Eric Hanley manages the property.
2. Petitioner Jeffrey Diehl and his roommates moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017. Tyler Rivard was one of petitioner's roommates. Monthly rent was \$3295.00.
3. Petitioner and his roommates paid a security deposit of \$3295.00 to respondent; they were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Petitioner was designated by his roommates as the person to whom the deposit was to be returned.
4. Petitioner and his roommates vacated the apartment on May 25, 2016.
5. On June 10, 2017, petitioner received a written statement from respondent itemizing deductions from the security deposit totaling \$1243.54. Interest in the amount of \$32.95 was credited to

the deposit. Respondent returned \$2084.41 of the deposit to petitioner. Petitioner disputed the deductions.

6. Both parties testified regarding cleaning charges: \$250.00 for general cleaning and \$352.00 for carpet cleaning. Petitioner and his roommates thoroughly cleaned the apartment before moving out. On the move-out inspection sheet, Eric Hanley indicated some cleaning needed to be done, but most of the items listed were marked "okay"; the floors in the bedrooms were marked as "need cleaning". There were no stains on the carpets and they were vacuumed so petitioner disputed the need to have them cleaned. Petitioner argued that any cleaning done by respondent was part of normal wear and tear.

7. Both parties testified regarding the electric bill which appeared as a \$41.54 deduction on the itemized statement. Eric Hanley withdrew the charge after it was pointed out to him that the electric bill was for the reading period 5/26/17 to 6/1/17 when petitioner was no longer living there.

8. Both parties testified with respect to the extra trash removal which appeared as a \$500.00 deduction on the itemized statement. According to the receipts provided by Eric Hanley, the total charges for extra garbage from Gauthier's and for All Cycle Waste were \$462.72. Respondent provided a trailer at the property and directed the tenants to throw their trash in the trailer. Petitioner put some items in the trailer because that's what he was directed to do; he was not told he would be charged for the extra trash removal. Although Mr. Hanley testified that the trailer was filled 3 times, there are only 2 charges from All Cycle on the account statement he provided. In addition, the receipt from Gauthier's indicates the charge for extra trash was \$225.00, not \$321.68 as Mr. Hanley testified; the total of \$321.68 included the charge for weekly service to the property. The cost for the extra trash removal was split between the 3 units in the building with petitioner's share being \$500.00. The lease provides that any tenant whose trash is found outside the container designated for trash removal and identified to an individual tenant will be fined \$500.00.

9. Both parties testified regarding the deduction of \$100.00 for 4 dislodged smoke detectors. Eric Hanley testified that 4 smoke detectors did not have batteries in them and were not connected. There

is no notation on the move-out inspection that there were any dislodged smoke detectors. Petitioner testified that he and his roommates did not disconnect or take apart any detectors.

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). Proper notice was provided.

13. Based on the evidence, the Hearing Officers conclude that none of the deductions taken from the deposit were proper. The cleaning done in the apartment was part of normal wear and tear and any damage to the smoke detectors was not attributable to petitioner or his roommates. As for the charge for extra trash removal, petitioners did not leave any trash outside the containers provided by respondent. In addition, there was no trash identified to petitioner or any of his roommates.

ORDER

Accordingly, it is hereby ORDERED:

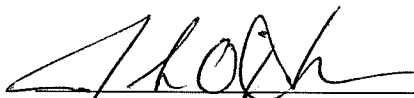
14. Petitioner Jeffrey Diehl is entitled to recover from respondent Whiteville Properties LLC the following amounts:

a) \$1243.54 of the principal amount of the security deposit improperly withheld after June 8, 2017; and

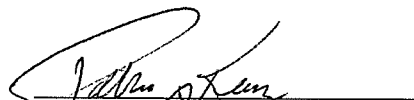
b) Additional interest of \$0.01 per day from June 9, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 9th of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara
Hearing Officer



Patrick Kearney
Hearing Officer