



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 11/7/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Abigail Dillon
Diemer Holdings LLC

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

In re: Request for Hearing of ABIGAIL)
DILLON Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by DIEMER HOLDINGS) HOUSING BOARD OF REVIEW
LLC for Rental Unit at 37 So. Williams)
Street, Apt. 222)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 17, 2016. For purposes of expedition Board Members Ben Traverse and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter. Petitioner Abigail Dillon was present and testified. Respondent Diemer Holdings LLC, although notified of the hearing and the opportunity to be heard, was not present.

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 Diemer Holdings LLC is the owner of a rental unit, 37 So. Williams Street, Apt. 222, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Abigail Dillon and her roommates Michaella Mathews and Emily Guilmette moved into the rental unit with a lease which ran from August 15, 2015 to May 26, 2016. Monthly rent was \$2,200.00. Petitioner represented all the tenants in this matter.
3. Petitioner and her roommates paid a security deposit of \$2,200.00 to respondent. Petitioner and her roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The apartment was vacant on May 26, 2016 when the lease terminated.
5. On May 25, 2016, respondent sent a written statement to Michaella Mathews, the designated tenant for the return of the deposit. Said statement itemized deductions totaling \$1,297.85. Interest in the

amount of \$1.32 was credited to the deposit. Respondent returned \$903.47 to Marybeth Mathews, Michaella's mother. The statement was received on May 31, 2016. The statement did not inform petitioner of her right to appeal the withholding of the deposit to this Board.

6. Respondent returned an additional \$100.00 to petitioner when she returned her parking pass to respondent.

7. On July 8, 2016, petitioner electronically filed her request for a hearing before this Board.

8. Respondent withheld \$750.00 for smoking fines, \$410.00 for cleaning and deodorizing the carpet, and \$37.85 for damage to a common area at the property.

CONCLUSIONS OF LAW

9. 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.

10. 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.

11. 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).

12. A tenant, upon receiving notice of the owner's intent to withhold any part of the deposit, may object and request a hearing before this Board. Minimum Housing Code Sec. 18-120(e). The tenant must file the request within 30 days of receipt of notice of the opportunity to request a hearing, or, in the absence of such notice, within 44 days of the vacate date. Minimum Housing Code Sec. 18-120(e). Respondent sought the dismissal of this matter prior to the hearing date, arguing that petitioner's request for a hearing, filed on July 8, 2016, was untimely. However, respondent failed to provide proper notice to petitioner informing her of the right to request a hearing before this Board within thirty days. Therefore, petitioner had 44 days to file the request for hearing and the Board concludes petitioner's request was filed in a timely manner.

13. Additionally, because respondent failed to provide proper notice, she forfeited the right to withhold any portion of the security deposit. Thus, the Board concludes the deductions for smoking fines,¹ carpet cleaning, and alleged damage to the property's common area were not proper.

ORDER

Accordingly, it is hereby ORDERED:

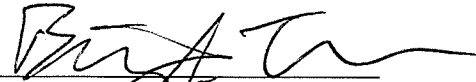
14. Petitioner Abigail Dillon is entitled to recover from respondent Diemer Holdings LLC the following amounts:

- a) \$1,197.85 of the principal amount of the deposit improperly withheld after June 9, 2016; and
- b) Additional interest of \$0.008 per day from June 10, 2016 until such date as the amount improperly withheld is returned to petitioner.


¹ Because this decision and order is based on the ground of there being improper notice, it is unnecessary for the Board to specifically reach the question of whether it was proper for respondent to deduct "smoking fines" from the security deposit. It bears acknowledging as a general matter, though, that applicable statutory language does not allow for the application of penalizing fines to security deposit amounts. Minimum Housing Code Sec. 18-120(c).

Dated at Burlington, Vermont this 7th of November, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Hearing Officer



Patrick Kearney
Hearing Officer