



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 12/5/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Crystal Dubuque
Roya Nematollahi & Nicholas Kordani

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

In re: Request for Hearing of CRYSTAL)
DUBUQUE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by NICHOLAS) HOUSING BOARD OF REVIEW
KORDANI and ROYA NEMATOLLAHI for)
Rental Unit at 74 Archibald Street)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 7, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind and Alec Bauer were also present. Petitioner Crystal Dubuque was present and testified. Respondent Roya Nematollahi testified via telephone conference call. Also present was Diana Dubuque, witness for petitioner.

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. Respondents Nicholas Kordani and Roya Nematollahi are the owners of a rental unit, 74 Archibald Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Crystal Dubuque moved into the rental unit with a lease which ran from December 1, 2012 to January 1, 2014.
3. On November 28, 2012, Burlington Housing Authority (“BHA”), through one of its programs, paid a security deposit of \$1100.00 on behalf of petitioner. At hearing, petitioner’s testimony and supporting correspondence from the BHA program indicated that the deposit money (minus any amounts withheld for damages) was to be returned to petitioner at the end of her tenancy.
4. Petitioner vacated the unit on August 31, 2016 at which time she did a walk-through of the unit with respondents’ property manager.
5. On September 10, 2016, respondents sent a letter, by certified mail, to BHA informing them that over the course of petitioner’s tenancy they spent \$1281.96 making various repairs to the unit;

consequently, respondents withheld the entire deposit. Respondents provided copies of receipts for repair work they did in the unit beginning in November, 2012. The Board reviewed the letter and receipts at hearing. Respondents' letter did not itemize the deductions; rather, it just referred to the invoices. Petitioner did not receive a copy of respondents' letter, respondents did not inform BHA of the right to appeal the withholding of the deposit, and there was no indication that interest was credited to the deposit.

6. At hearing, respondent testified that on September 10, 2016, a letter was also sent to petitioner by certified mail, informing her that the deposit was not being returned. Respondents did not provide the Board with a copy of this letter prior to the hearing. Respondents testified, though, that the content of the letter met the statutory notice requirements outlined below.

7. Upon inquiry by the Board, respondents indicated that if provided sufficient time, they could locate and deliver a copy of the letter purportedly sent to petitioner. The Board agreed to hold the hearing record open until respondents delivered a copy of the letter. Subsequent to the hearing, the Board received an electronic copy of a handwritten letter, dated September 10, 2016 and addressed to petitioner. However, contrary to respondents' earlier testimony, the letter did not meet statutory notice requirements; to wit, the statement was not itemized, it did not inform petitioner of her right to request a hearing with this Board, and respondent did not send copies of the invoices for work done in the unit to petitioner, but instead simply referred her to BHA.

8. At hearing, petitioner argued that respondents willfully withheld the deposit and requested that the Board award double the amount of the deposit. The crux of petitioner's argument was that respondents knew or should have known that the security deposit and requisite notice was to be delivered to her, rather than BHA. Petitioner testified that she never received respondents' letter; however, there was conflicting testimony on whether she provided respondents a proper forwarding address.

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 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 mail. *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, respondents failed to

comply with the notice requirements by failing to provide an itemized statement that included petitioner's appeal rights within the statement. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

13. As noted above, petitioner also argued that the withholding of the deposit was willful. If the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c). Here, whereas respondents forfeited petitioner's security deposit by failing to provide notice that satisfied statutory notice requirements, it is nonetheless clear that respondents made a good faith effort to inform petitioner of their withholdings. Thus, the Board concludes the deposit was not willfully withheld.

14. Petitioner is 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:

15. Petitioner Crystal Dubuque is entitled to recover from respondents Nicholas Kordani and Roya Nematollahi the following amounts:


a) \$1100.00 of the principal amount of the security deposit improperly withheld after September 14, 2016;

b) Interest in the amount of \$10.42 on the entire deposit for the period December 1, 2012 through September 14, 2016; and

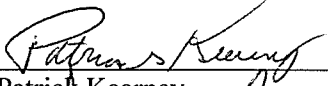
c) Additional interest of \$0.01 per day from September 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 5th of December, 2016.

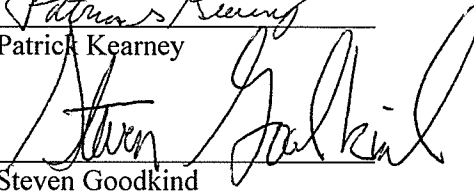
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW




Ben Traverse



Patrick Kearney



Steven Goodkind



Alec Bauer