



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 8/19/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Kirstin Daigle
Board Chair

cc: Murray Dunsmore
Rick Bove

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

**In re: Request for Hearing of MURRAY)
DUNSMORE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by 253-255 PEARL ST) HOUSING BOARD OF REVIEW
LLC for Rental Unit at 255 Pearl St, #6)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Murray Dunsmore was present and testified. Respondent 253-255 Pearl Street LLC was represented at the hearing by Rick Bove. Also appearing and testifying as witnesses were Madison Wagner and Daniel Holodak.

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 253-255 Pearl St LLC is the owner of a rental unit, 255 Pearl Street, #6, in the City of Burlington which is the subject of these proceedings. Rick Bove manages the property.
2. Petitioner Murray Dunsmore moved into the rental unit on June 1, 2014 under the terms of a written lease. Monthly rent was \$1845.00.
3. Petitioner paid a security deposit of \$1845.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 31, 2015.
5. On June 13, 2015, Rick Bove sent a written statement, by certified mail, to petitioner in conformance with ordinance requirements. Said statement itemized deductions totaling \$1655.00. Interest in the amount of \$1.85 was credited to the deposit. The amount of the security deposit returned to petitioner was \$191.85.

6. The statement of deductions did not inform petitioner of his right to request a hearing before this Board.

7. Both parties testified regarding the inspection fee which appeared as a \$50.00 deduction on the itemized statement. At the beginning of the tenancy the parties signed a security deposit agreement outlining the tenants' responsibilities at the end of the lease with respect to the return of the security deposit. Under that agreement, petitioners agreed to pay a \$50.00 inspection fee. Rick Bove testified that the charge was for his time to inspect the unit at the end of the tenancy. Petitioners disputed the charge because there was no formal walk-through at the beginning of the tenancy.

8. Both parties testified as to deductions made for cleaning expenses which totaled \$120.00 on the itemized statement. Respondent hired Almighty Peaks Painting to do the cleaning. The stove, refrigerator and bathroom were cleaned by Almighty Peaks; the charges for cleaning were consistent with the charges noted in the security deposit agreement. Petitioners cleaned the apartment before moving out and they left it in better condition than the way in which they received it.

9. Both parties testified regarding cleaning the carpets which appeared as a \$185.00 deduction on the itemized statement. Petitioners did not shampoo the carpets before vacating the apartment. Under the security deposit agreement, tenants are responsible for shampooing the carpets. Respondent hired Almighty Peaks Painting to shampoo the carpets; the cost to clean the carpets was \$185.00.

10. Both parties testified regarding abandoned items which appeared as a \$100.00 deduction on the itemized statement. Respondent needed to dispose of items left on the greenbelt and near the garbage totes. Although petitioner disputed that he left any of his possessions in the apartment, he acknowledged leaving a sofa on the greenbelt.

11. Other deductions indicated in the written statement were not contested.

CONCLUSIONS OF LAW

12. 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.

13. 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.

14. 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 mailed to the last-known address of the tenant. 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). Timely notice was provided.

15. Based on the evidence, the Board concludes the \$50 deduction for an inspection fee and the \$185.00 deduction for carpet cleaning were proper. Petitioner agreed to the \$50 charge when he signed the lease. Similarly, petitioner agreed he would be charged for cleaning the carpets if he failed to do it himself.

16. Based on the evidence, the Board concludes the deductions for cleaning the stove, refrigerator and bathroom were not proper. Petitioner cleaned those items before he moved out leaving them in better condition than they were when he moved into the apartment.

17. Based on the evidence, the Board concludes the deduction for abandoned items was proper and reasonable. Petitioner left a sofa that needed to be removed.

ORDER

Accordingly, it is hereby ORDERED:

18. Petitioner Murray Dunsmore is entitled to recover from respondent 253-255 Pearl St LLC the following amounts:

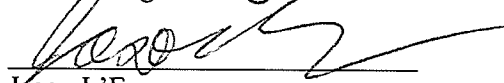
- a) \$120.00 of the principal amount of the security deposit withheld after June 14, 2015; and
- b) Additional interest of \$0.003 per day from June 15, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19th day of August, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW




Kirstin Daigle



Jason L'Ecuyer



Loyal Ploof



Patrick Kearney