



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**

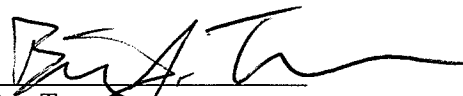
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 Travers  
Board Chair

cc: Nicole Killoran, Esq.  
Thomas Higgins, Esq.

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

**In re: Request for Hearing of RON and )  
ANTHONY ELIASON Regarding ) CITY OF BURLINGTON  
Withholding of Security Deposit by ) HOUSING BOARD OF REVIEW  
SCOTT and LAURIE HARRISON for )  
Rental Unit at 296 South Cove Road )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on October 3, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Ron Eliason was present and testified. Petitioner also called Tim Ahonen, of the Code Enforcement Office, as a witness. Respondent Scott Harrison was also present and testified. Both parties were represented by counsel: Nicole Killoran for petitioners and Tom Higgins for respondent.<sup>1</sup>

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 Scott and Laurie Harrison are the owners of a rental unit, 296 South Cove Road, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Ron and Anthony Eliason moved into the rental unit with a lease which ran from January 1, 2015 to December 31, 2016. Monthly rent was \$2700.00.
3. Petitioners paid a security deposit of \$2700.00 to respondents. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. In early 2016, petitioners informed respondents that they wanted to leave the house due to repeated infestations of mice. The parties provided conflicting testimony regarding the extent of the infestations. It is undisputed, though, that in May 2016, the parties executed a written agreement whereby

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<sup>1</sup> Counsel represented to the Board that another action between the parties is pending before the Civil Division of the Superior Court in Chittenden County, under Docket No. 745-9-16 Cncv. By that action, petitioner also seeks return of his security deposit. The Board Chair advised both parties regarding the potentially preclusive effect of this decision and order to that issue. Both parties agreed to proceed before the Board.

the lease would terminate early, on June 30, 2016. Under the agreement, petitioners agreed to pay rent through the month of June. Petitioners also agreed to relinquish their security deposit to respondents.

5. On May 26, 2016, however, the city's Code Enforcement Office posted the house as unfit for human habitation. More specifically, the city's Code Enforcement Office conducted an inspection of the property based on a complaint received from petitioners. The inspector found rodent feces in a crawl space behind the tub, as well as under the tub. In addition, there were disconnected and missing smoke detectors. As a result of the mouse droppings and missing smoke detectors, the inspector posted the house unfit for human habitation and instructed that petitioners were no longer able to sleep there. Over the next several days, petitioners moved their belongings out of the house. On June 17, 2016, the posting came down and petitioners could have returned to the house. Petitioners argued at hearing that since the house was posted "unfit," respondents breached the lease agreement, including the agreement to terminate the lease early, and petitioners were not liable for rent for the month of June. Respondents countered that the house was posted as "unfit" due to petitioners' own actions; to wit, respondents alleged that petitioners removed the smoke detectors and failed to clean up the mouse droppings.

6. Petitioners physically vacated the rental unit on May 31, 2016. On June 14, 2016, petitioners notified respondents, through counsel, that they had vacated the house.

7. By letter dated June 17, 2016, respondents informed petitioners that their entire deposit was being withheld in accordance with ordinance requirements. The statement itemized deductions totaling \$2825.00. Interest in the amount of \$0.39 was credited to the deposit.

8. By this letter, respondents expressly informed petitioners that their deposit was being withheld for the following reasons: (1) \$2700.00 in unpaid rent for June 2016; (2) \$100.00 to replace a missing exterior lamp; and (3) \$25.00 to replace a control knob for a window. As outlined above, petitioners argued that the deduction for unpaid rent was unreasonable as the rental unit was deemed uninhabitable. Moreover, regarding the exterior lamp and control knob, petitioners claimed these items were missing when they moved into the house.

9. At hearing, petitioners also argued that respondents willfully withheld the deposit and requested that the Board award them double the amount of the deposit. The basis of petitioners' argument is that respondents knew the house was unfit for habitation so that withholding the deposit was willful. Respondents countered that they were unaware of the problems until they were contacted by the Code Enforcement Office; in addition, respondents argued that the house was posted "unfit" as a direct result of petitioners' actions (the failure to vacuum up the mouse droppings and the removal of the smoke detectors which they did not report to respondents).

### **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). Here, proper notice was provided.

13. The parties agreed that the lease would terminate on June 30, 2016, under the agreement that petitioners would pay rent for the month of June and relinquish their security deposit. For the reasons explained above, petitioners did not pay rent for June and, in the security deposit withholding notice sent petitioners on June 17, 2016, respondents informed petitioners they were withholding \$2700.00 of their deposit “for lack of payment of the June 2016 rent.”

14. Whereas landlords are generally permitted to withhold amounts from security deposits for unpaid rent, see Minimum Housing Code Sec. 18-120(c), this Board is vested with the authority to review “the reasonableness of the owner’s deductions.” See id. 18-120(e). Based on the evidence, the Board concludes it was unreasonable for respondents to withhold rent for the 17 days in June that petitioners were unable to live in the rental unit.

15. The Board also concludes, though, that the period of uninhabitability did not rise to such a level that it breached the warranty of habitability or the parties’ underlying lease agreement. Once the rental unit was cleared for habitation, petitioners could have lived there, had they chosen to. Consequently, they were obligated to pay rent for the remainder of June 2016 and, as such, it was proper for respondents to withhold \$1,170.00 for unpaid rent.

14. It is well-established that “in the rental of any residential dwelling unit an implied warranty exists in the lease, whether oral or written, that the landlord will deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean and fit for human habitation.” *Hilder v. St. Peter*, 144 Vt. 150, 160 (1984). Under Vermont law, however, a breach of the warranty of habitability only occurs when the landlord “fails to make repairs within a reasonable time and the noncompliance materially affects health and safety.” 9 V.S.A. § 4458. Here, respondents acted within a reasonable time to remedy the issues that resulted in the rental unit being posted as unfit for human habitation.

14. With respect to the other items subject to the security deposit’s withholding, based on the evidence, the Board concludes it was not proper to withhold any deposit money to replace the missing lamp or the window control knob as there was insufficient evidence attributing the damage to petitioners.

15. Finally, petitioners 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). Petitioners argued that respondents knew the house was unfit for habitation so that withholding the deposit was willful. The house was posted unfit for habitation from May 26 to June 17. Respondents remedied the problems and the posting was removed on June 17, at which time petitioners could have lived in the house had they chosen to. Upon learning that petitioners had vacated the rental unit and were not returning, respondents acted promptly to provide petitioners with proper notice of the withholding of the security deposit. Therefore, the Board concludes the deposit was not willfully withheld.

**ORDER**

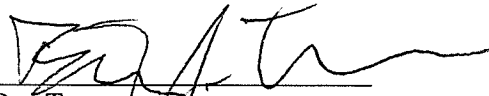
Accordingly, it is hereby ORDERED:

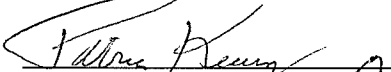
16. Petitioners Ron and Anthony Eliason are entitled to recover from respondents Scott and Laurie Harrison the following amounts:

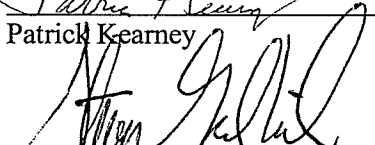
- a) \$1530.39 of the security deposit improperly withheld after June 28, 2016; and
- b) Additional interest of \$0.01 per day from June 29, 2016 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 7<sup>th</sup> of ~~October~~ <sup>November</sup>, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Patrick Kearney

  
Steven Goodkind