



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

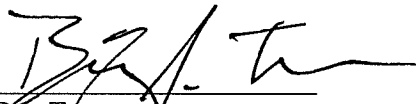
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 7/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Andrea Juneau & Andrew Ewanchyna
Kim & Martin Bombard

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

**In re: Request for Hearing of ANDREA)
JUNEAU and ANDREW EWANCHYNA)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by KIM and MARTIN BOMBARD) HOUSING BOARD OF REVIEW
for Rental Unit at 200 Howard St Unit A)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioners Andrea Juneau and Andrew Ewanchyna were present and testified. Respondents Kim and Martin Bombard was also present and testified.

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 Kim and Martin Bombard are the owners of a rental unit, 200A Howard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Andrea Juneau and Andrew Ewanchyna moved into the rental unit on or about May 1, 2015 under the terms of a written lease. Monthly rent was \$2200.00.
3. The amount of the security deposit was in dispute. Petitioners testified that the deposit amount was \$2,000.00 while respondents argued the deposit amount was \$1,000.00. On March 12, 2015, petitioners gave respondents a check in the amount of \$1,000.00. Petitioners stated the check was a partial payment toward the security deposit of \$2,000.00. However, respondents stated the check was a nonrefundable payment to hold the unit for petitioners since they would not be moving in for several weeks; according to respondents, the check was to compensate them for their loss of rent which resulted in taking the unit off the market and holding it for petitioners.

4. The lease, although inconsistent, supports petitioners' argument that the \$1,000.00 was a partial payment toward the deposit. Page 1 of the lease states the tenant has deposited \$1,000.00 as a security deposit. However, Sec. 8 of the lease, "Security Deposit", states the owner has collected a deposit from the tenant equal to the initial month's rent and indicates the owner collected \$1,000.00 to be applied toward tenant's security deposit. There is no dispute that \$1,000.00 was paid toward the deposit on June 1, 2015 with the rent check. As there is no other written document related to the \$1,000.00 check given to respondents on March 12, 2015, the Board finds the total amount of the security deposit was \$2,000.00.

5. Petitioners vacated the apartment on April 30, 2017.

6. On May 15, 2017, respondents sent petitioners a check in the amount of \$1,000.00 with a notation that the deposit was returned in full. The parties had already corresponded via text messages about the amount of the deposit prior to petitioners returning \$1,000.00. Although respondents believed the deposit amount was only \$1,000.00, Kim Bombard returned another \$1,000.00 by money order in order "to keep the peace."

7. Respondents did not inform petitioners of their right to appeal to this Board. In addition, interest was not credited to the deposit.

8. Petitioners argued that the deposit was willfully withheld and requested that double the amount withheld be returned to them. Petitioners argued that during their tenancy they paid water for a tenant living in the basement which demonstrated respondents' intent to deceive them.¹ Respondents countered they did not willfully withhold any money: they believed the deposit amount was \$1,000.00 and that's the amount they returned. Then, in order to keep peace between themselves and petitioners, Kim Bombard returned an additional \$1,000.00.

¹ The matter of water charges during the tenancy is not before this Board, and we make no findings or rulings with respect to it.

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). Petitioners vacated the unit on April 30, 2017 and respondents sent a check to them on May 15, 2017 – 1 day late.

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 certified mail.² *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

² An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

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 return the deposit within 14 days and by failing to include petitioners' appeal rights in the statement. Therefore, had respondents not returned the entire deposit, they would have forfeited it.

13. Both city ordinance and state law provide that 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) and 9 V.S.A. Sec. 4461(e). Petitioners argued that respondents' failure to return the deposit was willful. Petitioners argued that water charges they paid over the course of the tenancy show respondents' intent to deceive them, both with respect to the water and the deposit. Respondents returned what they believed was the entire amount of the security deposit. The text messages between the parties indicate a real dispute between them over the amount of the deposit, not an intent to deceive petitioners or to willfully withhold the deposit. The Board concludes the withholding of \$1,000.00 of the deposit was not willful.

14. Petitioners are 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.

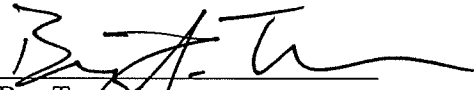
ORDER

Accordingly, it is hereby ORDERED:

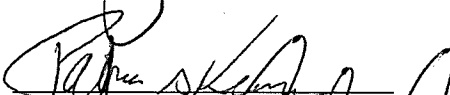
15. Petitioners Andrea Juneau and Andrew Ewanchyna are entitled to recover from respondents Kim and Martin Bombard interest in the amount of \$10.02 on the principal amount of the deposit.

Dated at Burlington, Vermont this 18th of July, 2017.

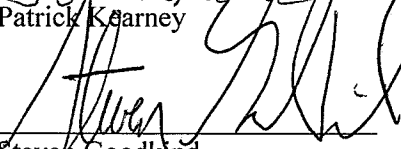
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