



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 2 July 2018

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Katie Forkas & Kyle Gagner
Sisters & Brothers Investment Group

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

**In re: Request for Hearing of KATIE FORKAS)
And KYLE GAGNER Regarding)
Withholding of Security Deposit by) CITY OF BURLINGTON
SISTERS & BROTHERS INVESTMENT) HOUSING BOARD OF REVIEW
GROUP for Rental Unit at 238 College)
Street, #103)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on May 21, 2018. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Katie Forkas was present and testified. Respondent Sisters and Brothers Investment Group was represented at the hearing by Kathy Parrott who 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. Respondent Sisters and Brothers Investment Group is the owner of a rental unit, 238 College Street, #103, in the City of Burlington which is the subject of these proceedings. Kathy Parrott manages the property.
2. Petitioners Katie Forkas and Kyle Gagner moved into the rental unit with a lease which ran from April 1, 2017 to March 31, 2018. Monthly rent was \$1375.00.
3. Petitioners paid a security deposit of \$1375.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties were in dispute regarding the date that petitioners vacated the apartment. Petitioners testified they vacated the apartment on March 31, 2018 sometime in the evening. Petitioners' belongings were out of the apartment on March 31 and they did not stay in the apartment that night. John Cole, another property manager for respondent, met Kyle Gagner at the apartment on April 1, 2018 to conduct a move-out inspection; the inspection checklist supports a move-out date of March 31. Kathy

Parrott testified that keys were returned on April 3, 2018 and that was the vacate date. Katie Forkas disputed this testimony, stating that Petitioners had actually lost the keys to the rental unit, meaning they had no keys to return. Based on the testimony provided, the Board finds petitioners vacated the apartment on March 31, 2018.

5. On April 13, 2018, respondent sent a statement, by certified mail, to petitioners in conformance with ordinance requirements. The statement itemized deductions totaling \$1397.00. No money was returned to petitioners.

6. Interest in the amount of \$2.06 was credited to the deposit.

7. Both parties testified with respect to a deduction of \$1064.00 taken to replace the carpet in the common hallway outside the rental unit. The carpet had a small tear in it that respondent attributed to petitioners, believing they had dragged a heavy table across the carpet when they moved out. Petitioners denied causing the damage; petitioners testified that when they moved the table, they did not drag it across the carpet. As the carpet was located in a common hallway, it was used by multiple tenants in the building; it was approximately 1 year old. Notwithstanding the small size of the tear, respondent charged petitioners for the value of replacing the entire carpet. At the time of the hearing, respondent had not acted to replace the carpet.

8. Both parties testified with respect to April rent which appeared as a \$133.00 deduction on the itemized statement. Respondent charged petitioners for 3 days of rent for April, 2018.

9. Both parties testified with respect to disposal of furniture which appeared as a \$200.00 deduction on the itemized statement. Kathy Parrott testified that respondent's maintenance person went to Myers to dispose of 4 kitchen chairs left by petitioners. Ms. Parrott testified that the disposal charge was \$200.00. There was no receipt for the disposal. Katie Forkas testified that prior to moving out, she called Myers about the chairs and was told that if they were put in the common dumpster located at the rental unit's building, there would be no extra charge to dispose of them. Katie Forkas testified that she accordingly put the chairs in the dumpster. The Board credits the testimony of Katie Forkas.

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). Proper notice was provided.

13. Based on the evidence, the Board concludes the deductions were not reasonable. Even if the limited damage to the common hallway carpet was attributable to petitioners, it amounted to nothing more than normal wear and tear. The deduction for 3 days of April rent was unreasonable as the Board find petitioners vacated the rental unit on March 31, 2018. As regarding the alleged disposal of the kitchen chairs, without supporting documentary evidence, the Board is unable to conclude the unreasonably high cost of \$200.00 was actually incurred by respondent.

ORDER

Accordingly, it is hereby ORDERED:

14. Petitioners Katie Forkas and Kyle Gagner are entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

a) \$1377.06, the principal amount of the security deposit and accrued interest improperly withheld after April 14, 2018; and

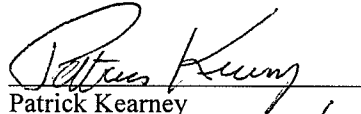
b) Additional interest of \$0.01 per day from April 15, 2018 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 1st day of July, 2018.

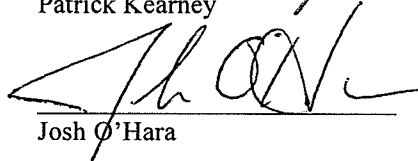
CITY OF BURLINGTON
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Ben Traverse



Patrick Kearney



Josh O'Hara