



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

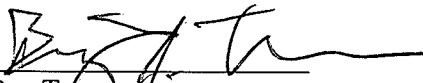
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/12/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers
Board Chair

cc: Scott Goodwin
Ray Allaire

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

**In re: Request for Hearing of SCOTT)
GOODWIN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by RAY ALLAIRE for) HOUSING BOARD OF REVIEW
Rental Unit at 56 Isham Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 22, 2016. Board Vice Chair Patrick Kearney presided. Board Members Shawn Tao and Steven Goodkind were also present. Petitioner Scott Goodwin was present and testified. Respondent Ray Allaire 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. Respondent Ray Allaire is the owner of a rental unit, 56 Isham Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Scott Goodwin moved into the rental unit with a lease which ran from October 1, 2014 to May 24, 2015 which was then extended for another year. Monthly rent was \$2,600.00.
3. Petitioner paid a security deposit of \$2,600.00 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 prior to the end of the lease period, but there were still other tenants and/or sublessees in the unit. There was confusion as to the termination date of the lease: petitioner and the remaining tenants believed they needed to move out by May 31 while respondent maintained the lease expired on May 24, 2016. The remaining tenants moved out on May 27, 2016.
5. There was conflicting testimony about when an itemized statement of deductions was provided to petitioner. Respondent testified that he left the statement in the door at petitioner's new address on June 9, 2016; respondent also testified that he went back to that address the night of June 9 and

the envelope was gone. Petitioner was out of town for a few days and he received the envelope on June 12 when he returned. Petitioner does not know when his roommate picked up the envelope, but disputes respondent delivered it on June 9 based on a June 12 voicemail message he received from respondent stating that the envelope was delivered that day. In addition, the itemized statement is dated June 10, 2016.

6. Respondent returned \$667.41 of the deposit to petitioner. Interest in the amount of \$18.00 was credited to the deposit.

CONCLUSIONS OF LAW

7. 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.

8. 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.

9. 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 forwarding 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). The tenants moved out of the rental unit on May 27, 2016. Although respondent maintained that he left an itemized statement in the door of petitioner's house on

June 9, petitioner did not receive the statement until June 12, 2016. In addition, a voice mail message left by respondent on petitioner's phone indicates the statement was delivered on June 12. In the absence of evidence showing the statement was delivered on June 9 (such as the signature of the person who received it), the Board concludes the statement of deductions was received on June 12 – more than 14 days after the unit was vacated. Notice was not timely. Therefore, respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly, it is hereby ORDERED:

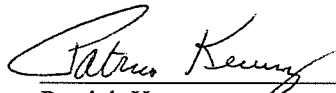
10. Petitioner Scott Goodwin is entitled to recover from Ray Allaire the following amounts:

a) \$1950.59 of the principal amount of the security deposit improperly withheld after June 10, 2016; and


b) Additional interest of \$0.01 per day from June 11, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 12th day of September, 2016.

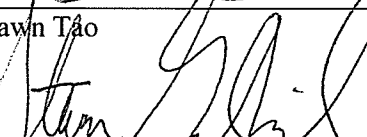
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Patrick Kearney



Shawn Tao



Steven Goodkind