



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 1/25/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Ben Green
Olof Franzon for Franzon Holdings LLC

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

In re: Request for Hearing of Ben Green)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by Franzon Holdings LLC for) HOUSING BOARD OF REVIEW
Rental Unit at 284 Maple Street, Apt. 1)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O’Hara were also present. Petitioner Ben Green was present and testified. Respondent Franzon Holdings LLC was represented at the hearing by Olof Franzon who testified. Also appearing and testifying were Sara Tucker and Christina Seguin.

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 Franzon Holdings LLC is the owner of a rental unit, 284 Maple Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Olof Franzon manages the property.
2. Petitioner Ben Green moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017. Monthly rent was \$950.00.
3. Petitioner paid a security deposit of \$950.00 and a pet deposit of \$475.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. The date petitioner vacated the apartment was in dispute. Petitioner testified that he moved out of the apartment on July 2, 2017. Olof Franzon testified that he learned petitioner was out of the apartment on July 10, 2017.
5. On July 26, 2017, in response to an email from petitioner about the return of his deposit, Olof Franzon informed petitioner, by email, that he was withholding some of the deposit for rent, cleaning and

the failure to return a key. Mr. Franzon stated he would return the pet deposit of \$475.00. Respondent's email does not inform petitioner of his right to appeal the withholding of the deposit. Respondent returned \$852.50 of the deposit to petitioner; petitioner received the check on August 1, 2017. There is no indication that interest was credited to the deposit as there was no itemized statement.

6. Petitioner argued that respondent's failure to return the deposit within 14 days of his vacate date was willful. Petitioner informed Olof Franzon by email sent on July 26, 2017 that he was required to return the deposit within 14 days of his move out date; petitioner also argued respondent's reasons for withholding the deposit were arbitrary. Mr. Franzon argued that he was entitled to withhold some money from the deposit because petitioner failed to give him sufficient notice that he was moving out; in addition, Mr. Franzon believed he was within his rights to withhold some money for items left in the apartment and for cleaning.

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 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).

10. 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.¹ *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 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, respondent failed to comply with the notice requirements by failing to return the deposit with an itemized statement within 14 days of the date petitioner vacated the apartment and by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. 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). Petitioner argued that respondent's failure to return the deposit within 14 days was willful, arguing the deductions were arbitrary and without merit. Respondent argued that the deductions were reasonable, and thus, he was not willfully withholding the deposit.

ORDER

Accordingly, it is hereby ORDERED:

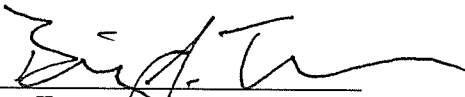
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

12. Petitioner Ben Green is entitled to recover from respondent Franzon Holdings LLC the following amounts:

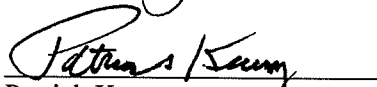
- a) \$572.50 of the principal amount of the deposit improperly withheld after July 24, 2017;
- b) Interest in the amount of \$4.08 on the principal amount of the deposit for the period June 1, 2016 to July 24, 2017; and
- c) Additional interest of \$0.004 per day from July 25, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 26th of October, 2017.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Patrick Kearney



Josh O'Hara