



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 Traverse
Board Chair

cc: Victoria Guesman
James Brault

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

In re: Request for Hearing of VICTORIA)
GUESMAN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JAMES BRAULT) HOUSING BOARD OF REVIEW
for Rental Unit at 100 Buell 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 Victoria Guesman was present and testified. Respondent James Brault was also present and testified. Also appearing and testifying were Nina Jensen and Andrea Dotoio.

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 James Brault is the owner of a rental unit, 100 Buell Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Victoria Guesman, Nina Jensen, Andrea Dotoio and 4 others moved into the rental unit with a lease which ran from June 1, 2015 to May 31, 2016.
3. Petitioner and her roommates paid a security deposit of \$4,900.00 to respondent. Petitioner and the other tenants were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and her roommates vacated the apartment on May 31, 2016.
5. On June 13, 2016, respondent sent a check and itemized statement to Andrea Dotoio as the tenants' designee. The statement itemized damages totaling \$1,120.72. Interest in the amount of \$2.50 was credited to the deposit. Respondent returned \$3,781.78 of the deposit to Andrea Dotoio.
6. Respondent's itemized statement did not inform the tenants of the opportunity to request a hearing before this Board within 30 days of receipt of the landlord's written statement.

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 certified 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

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

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 include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly, it is hereby ORDERED:


11. Petitioner Victoria Guesman is entitled to recover from respondent James Brault the following amounts:

a) \$1,120.72 of the principal amount of the security deposit improperly withheld after June 14, 2016; and

b) Additional interest of \$0.007 per day from June 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

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

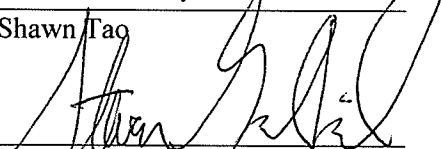
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Patrick Kearney



Shawn Tao



Steven Goodkind