



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.

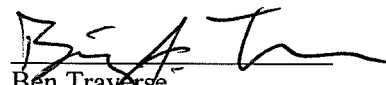
Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (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

9/9/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Brad Harden & Kendra Kenney
Marguerite Murray

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

**In re: Request for Hearing of BRAD HARDEN)
And KENDRA KENNEY Regarding) CITY OF BURLINGTON
Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
MARGUERITE MURRAY for Rental Unit)
At 21 Robinson Parkway)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Shawn Tao and Steven Goodkind were also present. Petitioners Brad Harden and Kendra Kenney were present and testified. Respondent Marguerite Murray 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 Marguerite Murray is the owner of a rental unit, 21 Robinson Parkway, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Brad Harden and Kendra Kenney moved into the rental unit with a lease which ran from February 15, 2014 to February 28, 2015. The lease was extended twice and terminated on May 31, 2016. Monthly rent at the end of the tenancy was \$2,100.00.
3. Petitioners paid a security deposit of \$2,000.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the house on May 31, 2016.
5. On June 14, 2016, respondent sent a statement, by certified mail, to petitioners informing them that the entire deposit was being withheld for damages. The statement complied with all legal requirements. Interest in the amount of \$3.25 was credited to the deposit.

6. Respondent withheld \$1500.00 to refinish the wood floors on the first floor due to scratches made by petitioners' dogs. Most of the damage to the floors was in the kitchen and dining room. Respondent received an estimate of \$1500.00 from Woodline Floors to do the work. Petitioners disputed that the entire floor needed to be refinished; they consulted a property management company who indicated that pet scratches on a wooden floor can typically be buffed out. Additionally, petitioners argued that they paid an additional \$100/month in rent over the course of 17 months to have 2 dogs in the house, and that the additional rent should have covered any damage done by their dogs.

7. Respondent withheld \$195.00 to replace the freezer door which was slightly dented. Petitioners denied causing any damage to the freezer door.

8. Respondent withheld \$90.00 to replace the lattice near the patio. Petitioners pulled off the lattice, but did not replace it. Their estimate for new lattice was \$25 to \$45; they argued a reasonable deduction was \$60.00.

9. Respondent withheld \$150.00 to replace the plastic gutter with aluminum gutters and to replace 3 extensions. The tenants replaced the gutter with plastic ones and threw away the extensions because they were damaged by having snow piled on them.

10. Respondent withheld \$19.14 to replace the dryer vent screen which was dirty and needed to be replaced.

11. Respondent withheld \$300.00 to replace the fire place screen which was detached from the frame. Petitioners argued they did not damage the screen.

12. Respondent deducted a total of \$750.00 for cleaning the house. Although petitioners cleaned before they moved out, they agreed to cover \$150.00 for additional cleaning. Respondent paid someone \$150.00 to do some cleaning, and she spent 30 hours doing additional cleaning, such as pulling out the refrigerator and cleaning behind it, cleaning the washer and dryer, washing the wooden blinds and cleaning the basement and garage.

13. Respondent deducted \$9.06 to replace a cord storage reel and \$16.05 to replace a solar powered garden light. Petitioners denied any knowledge about damaging the garden light and did not know anything about the storage reel.

14. Respondent deducted \$329.83 to replace garden plants which she argued were damaged by petitioners' dogs. Petitioners denied that their dogs damaged the plants, and they argued that they were not responsible for the upkeep of the plants, only the lawn. The parties disputed whether or not a gardener was maintaining the garden during the second year of their tenancy.

15. Other deductions from the deposit were not disputed.

CONCLUSIONS OF LAW

16. 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.

17. 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.

18. 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). Proper notice was provided.

19. Based on the evidence, the Board concludes the deductions for the freezer door (\$195), the storage reel (\$9.06), the dryer vent (\$19.14), the garden light (\$16.05), the garden plants (\$329.83), and for \$600 of cleaning were not reasonable. The costs of damage to the freezer door and the allegedly missing storage reel were not clearly attributable to petitioners, and thus, are disallowed. The damage to the dryer vent and garden light, and \$600.00 of cleaning was attributable to normal wear and tear, and thus, not allowed. As regarding the cost for garden plants, the evidence indicated that during the course of the parties' rental agreement, respondent retained responsibility for the garden's upkeep and, to that end, used the services of a professional gardener for at least a portion of petitioners' tenancy. Under these circumstances, petitioners may not be held responsible for any damage to the garden plants. Moreover, it was unclear from the evidence that the garden plants purchased by respondent were the same as those which existed prior to petitioners' tenancy, or that they were otherwise necessary to return the garden to its prior condition.

20. Based on the evidence, the Board concludes there was some damage to the wood floors which was attributable to petitioners' dogs. As noted above, during the course of petitioners' tenancy, their rent was increased by \$100/month in consideration of their having dogs at the property. The Board rejects petitioners' argument that this additional rent was intended as a pet deposit to cover any damage done by their dogs. Indeed, respondent expressly rejected petitioners' offer to pay a pet deposit. Rather, the Board concludes that respondent merely exercised her right as a landlord to increase petitioners' rent. In raising the rent, however, respondent expressly agreed to petitioners having dogs at the property. Accordingly, in assessing damages beyond normal wear and tear, respondent must consider the wear and tear that would normally be caused by having dogs at the property. The Board concludes that such wear and tear would include scratches on the hardwood floors. The Board agrees, though, that while some of the damages at issue here were within the bounds of what would be expected, other damages went beyond that which should be considered normal. Therefore, the Board finds a reasonable deduction for the floors to be \$400.00.

21. Based on the evidence, the Board concludes a reasonable deduction for the lattice is \$60.00. A reasonable deduction for the fireplace screen is \$150.00, given that the screen's depreciation in value since it was first purchased. And, a reasonable deduction for the gutter is \$75.00, as only part of the damage was attributable to petitioners.

ORDER

Accordingly, it is hereby ORDERED:

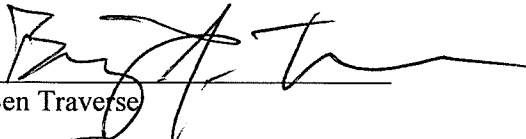
22. Petitioners Brad Harden and Kendra Kenney are entitled to recover from respondent Marguerite Murray the following amounts:

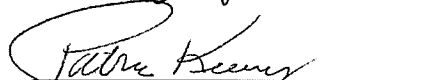
a) \$1,067.68 of the principal amount of the security deposit improperly withheld after June 14, 2016; and


b) Additional interest of \$0.01 per day from June 15, 2016 until such date as the amount improperly withheld is returned to petitioners.

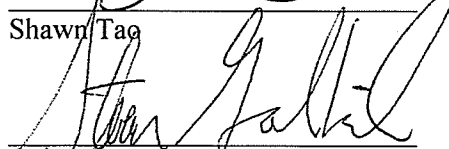
DATED at Burlington, Vermont this 9th day of September, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Shawn Tao


Steven Goodkind