



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 10/17/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Christine Hart
Jonathan Heller

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

**In re: Request for Hearing of CHRISTINE)
HART Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JONATHAN) HOUSING BOARD OF REVIEW
HELLER for Rental Unit at 81 Dunder Rd)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 18, 2017. Board Chair Ben Traverse presided. Board Members Josh O’Hara, Patrick Kearney, Steven Goodkind and Alec Bauer were also present. Petitioner Christine Hart was present and testified. Respondent Jonathan Heller 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 Jonathan Heller is the owner of a rental unit, 81 Dunder Road, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Christine Hart moved into the rental unit under an agreement to rent a room in respondent’s home from June 1, 2017 to August 31, 2017. Monthly rent was \$650.00.
3. Petitioner paid a security deposit of \$300.00 to respondent on April 20, 2017. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on June 25, 2017.
5. On June 26, 2017, petitioner emailed respondent and asked if he would return her deposit to her. On June 27, 2017, respondent provided several responses via email:

At 12:13 am: I am unable to return your security deposit as it will go towards the 15 day period of notice. This we both agreed upon. I apologize for any inconvenience. I have witnesses that your statements are completely fabricated please don't bother

At 7:49:21 am: I'm finding a lot of damage in your room and around the house I think you will need to pay me

At 7:49:59 am: I will have an itemize list within 14 days

At 12:06:23 pm: I decided it's not worth the fight send me your address I will send you a check

After respondent agreed to return the deposit, petitioner provided her forwarding address to him.

6. After the exchange of emails, the parties then exchanged text messages about the deposit.

Respondent indicated he was not financially able to return the deposit in full and asked for additional time to return the deposit. Petitioner requested that the deposit be mailed to her by July 9, 2017 in accordance with his responsibility to return the deposit within 14 days.

7. On July 10, 2017, petitioner emailed respondent again to find out if the deposit had been returned. Respondent replied he would not have the money until August 1.

8. On July 9, 2017, petitioner sent a demand letter to respondent requesting that she receive her deposit of \$300.00 no later than July 24, 2017. The deposit was not returned. On July 25, 2017, petitioner filed her request for hearing before this Board.

9. On September 13, 2017, respondent returned \$66.97 of the deposit to petitioner. Interest was not credited to the deposit.

10. Petitioner argued that respondent's failure to return the deposit within 14 days was willful as he was informed that he was required to return the deposit with a statement within 14 days. In addition, respondent agreed to return the deposit in full, but did not do so. Respondent testified that he only noticed damages after he agreed to return the deposit. The Board notes that respondent's testimony on this point is inconsistent with the email messages he sent to petitioner on June 27, 2017.

11. Respondent did not provide notice to petitioner of her right to dispute the withholding of the deposit to this Board.

CONCLUSIONS OF LAW

12. 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.

13. 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.

14. 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). If the failure is willful, the landlord shall be liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

15. 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

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

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 to petitioner within 14 days of the date she moved out, by failing to provide an itemized statement of deductions within 14 days and by failing to provide notice of petitioner's right to appeal to the this Board. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

16. 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 was willful: he was informed of his obligation to return the deposit within 14 days and he agreed to return the deposit, but he failed to do so. Finally, on September 13, 2017, respondent returned only a portion of the deposit - \$66.97 - to petitioner. The Board concludes the failure to return the deposit was willful.

17. Petitioner is entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

Accordingly, it is hereby ORDERED:




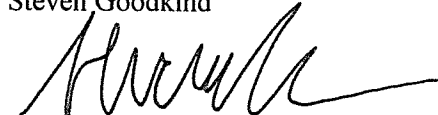
18. Petitioner Christine Hart is entitled to recover the following amounts from respondent Jonathan Heller:

- a) \$466.06, double the amount of the deposit willfully withheld after July 9, 2017;
- b) Interest in the amount of \$0.29 on the entire deposit for the period April 20, 2017 to September 13, 2017; and

c) Additional interest of \$0.003 per day from September 14, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 17th of October, 2017.

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HOUSING BOARD OF REVIEW


Ben Traverse
Josh O'Hara
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Alec Bauer