



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 9/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Mattie Hayes
Phyllis Galanthay

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

**In re: Request for Hearing of MATTIE HAYES)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by PHYLLIS) HOUSING BOARD OF REVIEW
GALANTHAY for Rental Unit at 37 So.)
Williams Street, Unit 218)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Mattie Hayes was present and testified. Respondent Phyllis Galanthay testified via telephone conference call.

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 Phyllis Galanthay is the owner of a rental unit, 37 So. Williams Street, Unit 218, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Mattie Hayes moved into the rental unit with a lease which ran from June 1, 2015 to May 31, 2016. Monthly rent was \$1550.18.
3. Petitioner paid a security deposit of \$1550.00 to respondent. 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 May 25, 2016.
5. On June 17, 2016, respondent sent a statement to petitioner informing her that part of the deposit was being withheld. Interest was not credited to the deposit. Respondent did not return the deposit sooner because she did not have petitioner's complete forwarding address (the street name was missing). Respondent returned \$1,146.15 of the deposit to petitioner at that time. On June 25, 2016, respondent returned an additional \$85.70 to petitioner.

6. Respondent's statement did not inform petitioner of her right to request a hearing before this Board to dispute the withholding of her 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 last-known address of the tenant, which may be the address of the rental unit if no forwarding address has been provided. 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 a statement within 14 days of the date petitioner moved out of the unit 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. 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:

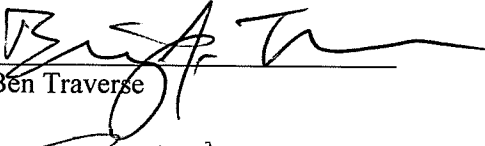
12. Petitioner Mattie Hayes is entitled to recover from respondent Phyllis Galanthay the following amounts:

- a) \$318.15 of the principal amount of the security deposit improperly withheld after June 8, 2016;
- b) Interest in the amount of \$3.94 for the period June 1, 2015 through June 8, 2016; and
- c) Additional interest of \$0.002 per day from June 9, 2016 until such date as the amount improperly withheld is returned to petitioner.

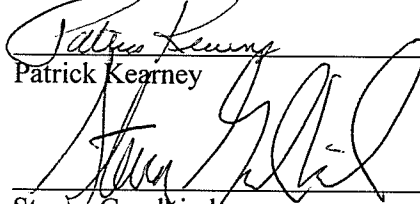
DATED at Burlington, Vermont this 20th day of September, 2016.

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

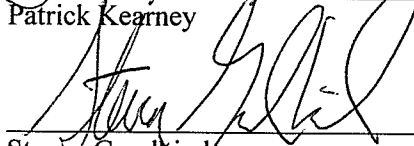
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Patrick Kearney



Steven Goodkind