



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

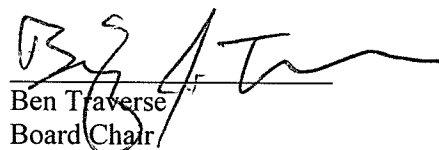
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 12/30/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Rebecca & Lee Henderson
Alph Realty

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

**In re: Request for Hearing of REBECCA and)
LEE HENDERSON Regarding) CITY OF BURLINGTON
Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
ALPH REALTY for Rental Unit at 65B)
King Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 7, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Rebecca and Lee Henderson were present and testified. Respondent Alph Realty was represented by Brennan Kelley and Kristina Bissonette from Bissonette Properties. Also appearing and testifying as a witness was Diane Deso.

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 Alph Realty is the owner of a rental unit, 65B King Street, in the City of Burlington which is the subject of these proceedings. Brennan Kelley and Kristina Bissonette manage the property.
2. Petitioners Rebecca and Lee Henderson moved into the rental unit with a written lease which ran from March 21, 2012 to February 28, 2013. After the initial term of the lease, petitioners rented on a month-to-month basis.
3. Petitioners paid a security deposit of \$975.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties provided conflicting testimony as to the date petitioners moved out of the apartment and the date on which all the keys to the unit were returned to respondent. Respondent terminated the tenancy as of August 31, 2015; however, respondent agreed to extend the termination date

to give petitioners more time to move-out of the apartment. Rebecca Henderson moved out on September 15, but Lee Henderson remained in the apartment. Petitioners testified Lee Henderson moved out on September 24, 2015 at which time Rebecca Henderson returned both keys to Bissonette Properties' office. Kristina Bissonette testified that Rebecca Henderson returned one key to her, and on October 2, 2015, she witnessed Lee Henderson return the second key to the office. The Board credits respondent's testimony and specifically finds that petitioners moved out of the apartment on or by September 24, 2015, but did not return the second key until October 2, 2015.

5. On October 13, 2015, respondent sent a written statement to petitioners' forwarding address, by certified mail, in conformance with ordinance requirements. Said statement itemized deductions totaling \$730.00. Interest in the amount of \$34.13 was credited to the deposit. The amount of the security deposit returned to petitioners was \$279.13.

6. Both parties testified concerning 2 flea treatments which appeared as a \$105.00 deduction on the itemized statement. Petitioners had 2 cats and a bunny in the apartment during their tenancy. After petitioners moved out of the apartment, fleas were discovered in the apartment and respondent had the apartment treated by Eliminator Pest Control on October 5. The charge for treatment was \$150.00. (Respondent inadvertently transposed the numbers when writing the deduction on the itemized statement.)

7. Both parties testified concerning the deduction made for trash removal which totaled \$75.00 on the itemized statement. Respondent disposed of 2 mattresses, 2 sofa beds and miscellaneous items on October 30, 2015 at a cost of \$175.55; the rationale for charging petitioners \$75.00 was vague. Respondent attributed the items to petitioners because they were the only tenants moving out of the building at that time; another apartment was vacated approximately one week before petitioners moved out. There are 6 units in the building. Petitioners disputed leaving any extra trash.

8. Both parties testified concerning past due rent which appeared as a \$550.00 deduction on the itemized statement. Respondent's charge is for rent from September 16 to 30. Petitioners paid \$550.00 in rent for September 1 to 15. Petitioners testified that when respondent agreed to extend their move-out

date into September, it also agreed to allow petitioners to pay rent at a rate of \$35.00/day for the days in September that they occupied the apartment. Rebecca Henderson testified that when she returned the first key on September 24, respondent agreed to relieve petitioners of any obligation to pay rent beyond that date. Indeed, petitioners do not dispute that they owe rent for September 16 through 24. Respondent now claims that it should be permitted to charge rent for the remainder of September on account of Lee Henderson not returning the second key until October 2. On this issue, the Board credits petitioners' testimony that an express agreement was entered into with respondent, limiting the period of petitioners' rental obligation to September 24.

CONCLUSIONS OF LAW

9. 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.

10. 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.

11. 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 tenant's forwarding address. 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). Here, although petitioners' obligation to pay rent ceased on September

24, the period of limitations to provide proper notice commenced on October 2, when Lee Henderson returned the second key. Thus, timely notice was provided.

12. Based on the evidence, the Board concludes the deduction for flea treatment was proper and reasonable as the fleas were caused by petitioners' pets.

13. Based on the evidence, the Board concludes petitioners moved out of the apartment on or by September 24, and the parties agreed that the rental rate of \$35.00/day would cease on September 24. Accordingly, a proper deduction for unpaid rent is \$315.00 (rent for September 16 through 24).

14. Based on the evidence, the Board concludes the deduction for trash was not proper as the extra trash cannot be specifically attributed to petitioners.

ORDER

Accordingly, it is hereby ORDERED:

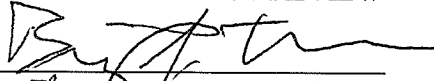
15. Petitioners Rebecca and Lee Henderson are entitled to recover from respondent Alph Realty the following amounts:

a) \$310.00 of the principal amount of the security deposit improperly withheld after October 16, 2015; and

b) Additional interest of \$0.002 per day from October 17, 2015 until such date as the amount improperly withheld is returned to petitioners.

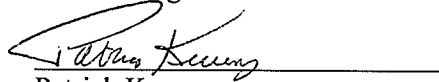
DATED at Burlington, Vermont this 30th day of December, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers


Jason L. Ecuyer


Kirstin Daigle


Patrick Kearney