



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

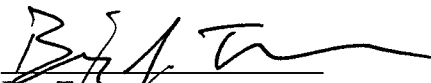
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 8/2/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers
Board Chair

cc: Laura Hinsdale
Bob Meijers

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

In re: Request for Hearing of LAURA)
HINSDALE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by BOB MEIJERS) HOUSING BOARD OF REVIEW
for Rental Unit at 119 Buell Street)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Shawn Tao and Steven Goodkind were also present. Petitioner Laura Hinsdale was present and testified. Respondent Bob Meijers testified via telephone conference call. Also appearing and testifying were Will Howard and Gaye Godfrey.

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 Bob Meijers is the owner of a rental unit, 119 Buell Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Laura Hinsdale and her roommates - Nora King, Samantha Hulbert, Brielle Short, Brina Pochal, Emily Wheaton, Hunter DiGangi and Francesca Huey - moved into the rental unit with a written lease which ran from June 10, 2015 to May 31, 2016. Monthly rent was \$6,008.00.
3. Petitioner and her roommates paid a security deposit of \$6,008.00 to respondent; each tenant paid \$751.00 toward the total deposit. Petitioner and her roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Upon challenge by respondent, petitioner indicated she was authorized by her former roommates to represent their interests in this matter, and to receive any money ordered by the Board to be returned to the tenants. Gaye Godfrey (Nora King's mother) confirmed this authorization. The Board credits petitioner's representations.
4. Petitioner and her roommates vacated the apartment on May 31, 2016.

5. On June 14, 2016, respondent sent a statement, by certified mail, to each tenant informing them that part of the deposit was being withheld for damages. The statement itemized damages totaling \$2,190.21. Respondent returned \$535.27 to each tenant with the exception of Brina Pochal who received nothing. Interest was not credited to the security deposit. In addition, the written statement did not inform the tenants of the opportunity to request a hearing before this Board.¹

CONCLUSIONS OF LAW

6. 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.

7. The State of Vermont's Landlord and Tenant Act, 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.

8. 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).

¹ When the Board inquired into the absence of notice to the tenants of their right to a hearing, the telephone connection with respondent disconnected. The Board attempted to reconnect with respondent but the call went to his voicemail. Respondent did not make any attempt to call back and has not subsequently contacted the Board to ask about the circumstances surrounding the disconnection. Accordingly, the Board presumed that respondent purposefully disconnected and refused to pick up the return call, and the hearing proceeded in his absence.

9. 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 mail.² 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 include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

10. 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:

11. Petitioner Laura Hinsdale is entitled to recover from respondent Bob Meijers the following amounts:

a) \$2,261.11 of the principal amount of the security deposit improperly withheld after June 14, 2016;

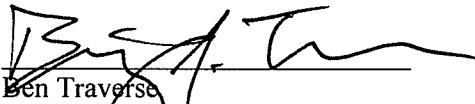
b) Interest in the amount of \$15.02 on the entire deposit for the period June 10, 2016 to June 14, 2016; and

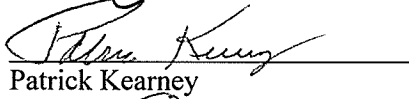
² An amendment to Sec. 18-120(c) removed a "certified mail" requirement effective January 7, 2015.

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

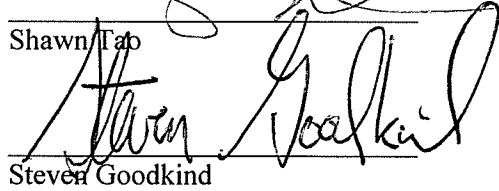
DATED at Burlington, Vermont this 2nd day of August, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverso


Patrick Kearney


Shawn Lap


Steven Goodkind