



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: Raquel Jimenez
Potash Properties LLC

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

**In re: Request for Hearing of RAQUEL)
JIMENEZ Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by POTASH) HOUSING BOARD OF REVIEW
PROPERTIES LLC for Rental Unit at)
97-99 Buell Street, Apt. 4)**

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. Petitioner Raquel Jimenez was present and testified. Respondent Potash Properties LLC was represented at the hearing by Vince Paradis and Deborah Paradis.

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 Potash Properties LLC is the owner of a rental unit, 97-99 Buell Street, Apt. 4, in the City of Burlington which is the subject of these proceedings. Vince Paradis and Deborah Paradis manage the property.

2. Petitioner Raquel Jimenez moved into the rental unit with a lease which ran from November 1, 2003 to October 31, 2004. Each year after that, the parties signed a new lease agreement. The most recent agreement expired on October 31, 2012, but the parties amended the lease so that it would renew automatically on a month-to-month basis until it was terminated. On April 6, 2015, respondent notified petitioner, in writing, that the lease would terminate on September 30, 2015.

3. Petitioner initially paid a security deposit of \$896.00 to respondent on November 1, 2003. Over the course of multiple lease renewals, responded deducted amounts for repairs from the initial security deposit and applied the balance as a deposit for the renewed lease. The Board notes that although the security deposit was previously deducted in the context of a lease renewal, respondent was

nonetheless obligated to abide by statutory notice requirements; however, any claim arising from the past deductions is now untimely. The most recent lease agreement, executed by both parties on October 11, 2011, acknowledges the deposit as being \$674.50. Therefore, the Board finds the amount of the security deposit under consideration is \$674.50. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

4. When the tenancy terminated on September 30, 2015, the apartment was not fully vacated and petitioner asked for additional time to complete her move-out. Respondent agreed and indicated that he would be unable to check the apartment until October 5, 2015. Petitioner was able to fully vacate the apartment on October 3, 2015, which respondent confirmed on October 5.

5. On October 19, 2015, respondent sent a written statement, by certified mail, to petitioner's forwarding address in conformance with ordinance requirements. Said statement itemized deductions totaling \$207.00. The amount of the deposit returned with the statement was \$440.50. However, petitioner did not receive the statement and check because it was returned by the post office to respondent. Respondent presented the returned check at the hearing and offered it to petitioner, but she refused to accept it.

6. Interest was not credited to the deposit. The lease agreement provides that the deposit will be returned "with simple interest, computed at 2%, at the end of the lease period...."

7. Both parties testified concerning rent for October which appeared as a \$162.00 deduction on the itemized statement. Monthly rent was \$1200.00; petitioner's share of the rent was \$770.00 with Burlington Housing Authority paying the balance. No rent money was received for October even though petitioner did not vacate the apartment until October 3.

8. Both parties testified concerning the return of the apartment keys which appeared as a \$25.00 deduction on the itemized statement. Petitioner claims she left the keys in the apartment when she finished moving out of it. However, respondent did not get the keys until 3 weeks later when they were found in the apartment. By that time, respondent had already made new keys for the apartment and the lease agreement set forth a \$25.00 charge for key replacements.

9. Both parties testified regarding excess trash which appeared as a \$20.00 deduction on the itemized statement. Respondent presented a photograph of a picture frame leaning against a curbside trash receptacle but provided no invoice or receipt in support of the deduction. Petitioner acknowledged leaving the picture frame and stated that she did so because the receptacle was full.

CONCLUSIONS OF LAW

10. 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.

11. 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.

12. 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). Timely notice was sent within 14 days after respondent discovered the apartment was vacant.

13. Based on the evidence, the Board concludes the deductions for unreturned keys and unpaid rent were proper. However, the Board concludes that petitioner was only in the apartment until October 3; therefore, a reasonable deduction for unpaid rent is \$116.13 (3 days of rent). Respondent should not

now be permitted to collect two additional days of rent on account of his being unavailable to check the apartment until October 5.

14. Based on the evidence, the Board concludes the deduction for excess trash was not proper. While petitioner acknowledged leaving a picture frame next to the garbage receptacle, there was no invoice provided to support the deduction.

15. 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 lease agreement provides that interest will be computed at 2% at the end of the lease period. Therefore, that is the rate the Board will use to calculate interest owed on the deposit. However, as a new lease agreement, noting a new deposit amount, was executed on October 11, 2011, the Board will only order recovery of interest on \$674.50 (the amount of the security deposit under the lease in effect) from November 1, 2011 through October 19, 2015.

ORDER

Accordingly, it is hereby ORDERED:

16. Petitioner Raquel Jimenez is entitled to recover from respondent Potash Properties LLC the following amounts:

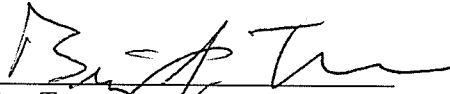
a) \$533.37 of the principal amount of the security deposit improperly withheld after October 19, 2015;

b) Interest in the amount of \$53.48 on the entire deposit for the period November 1, 2011 through October 19, 2015; and


c) Additional interest of \$0.03 per day from October 20, 2015 until such date as the amount improperly withheld is returned to petitioner.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



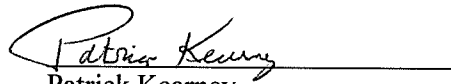
Ben Traverse



Jason L'Ecuyer



Kirstin Daigle



Patrick Kearney