



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

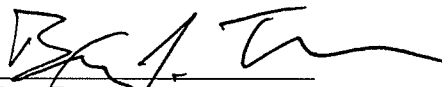
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Travers
Board Chair

cc: Lawrence Johnson Jr.
Kalsang GGT

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

**In re: Request for Hearing of LAWRENCE)
 JOHNSON JR Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by KALSANG GGT for) HOUSING BOARD OF REVIEW
 Rental Unit at 217 No. Willard Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Lawrence Johnson, Jr. was present and testified. Respondent Kalsang GGT was also present and testified. Also appearing and testifying as a witness was Cody Burrows. This case was originally heard on January 19, 2016 without Mr. Kalsang being present and an order was issued on February 24, 2016. Upon receiving the order, Mr. Kalsang contacted the Board, stating he was unaware of the January 19 hearing because he was out of the country when the written notice of hearing was sent to him. Mr. Kalsang provided documentary evidence of his travel dates and the Board concluded he had no way of knowing about the January 19 hearing. Consequently, the Board reheard the case on April 4, 2016.

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 Kalsang GGT is the owner of a rental unit, 217 No. Willard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Lawrence Johnson, Jr. moved into the rental unit under the terms of a written lease in February, 2012. Petitioner paid a security deposit of \$1190.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
3. On October 28, 2015, petitioner provided written notice to respondent that he was vacating the property on December 31, 2015. However, petitioner vacated the apartment on November 26, 2015

claiming that respondent agreed to an earlier vacate date of December 1. Respondent denied agreeing to an earlier vacate date of December 1.

4. On December 7, 2015, respondent sent a letter, by certified mail, to petitioner at the address of the rental unit. The letter was forwarded by the post office to petitioner's new address and on December 22, petitioner received it. Respondent's letter informed petitioner that the entire deposit was being withheld for late fees and damages in the apartment. The letter only provided a general description of the damages and did not itemize the deductions. In addition respondent's letter did not inform petitioner of his right to request a hearing to dispute the withholding of the deposit.

6. Interest was not credited to the deposit.

7. Petitioner disputed that he caused any damage in the unit beyond normal wear and tear. In addition, petitioner argued that respondent willfully withheld the deposit to retaliate against him for calling the Code Enforcement Office to report a lack of heat in the unit. Respondent denied that he withheld the deposit in retaliation; respondent stated he withheld the deposit for December rent. The Board finds respondent's testimony to be credible and finds the deposit was withheld for unpaid rent, not in retaliation for petitioner filing a complaint with the Code Enforcement Office.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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 proper 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).

11. 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.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 include petitioner's appeal rights in the statement. In addition, respondent's statement did not itemize how much was being withheld for each claim of damage. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. If the failure to return the 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 his deposit was willfully withheld in retaliation for filing a complaint with the city's Code Enforcement Office. The Board has found that respondent withheld petitioner's deposit for December rent, not in retaliation for petitioner making a complaint to the Code Enforcement Office. Therefore, the Board concludes that the failure to return the deposit was not willful.

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

13. 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:

14. Petitioner Lawrence Johnson Jr. is entitled to recover from Kalsang GGT the following amounts:

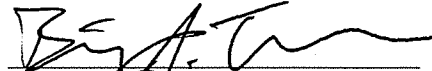
a) \$1190.00, the principle amount of the security deposit improperly withheld after December 10, 2015;

b) Interest in the amount of \$11.41 on the entire deposit for the period February 1, 2012 through December 10, 2015; and

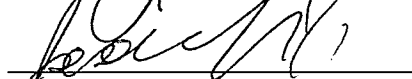
c) Additional interest of \$0.008 per day from December 11, 2015 until such date as the amount improperly withheld is returned to petitioner.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Jason L'Ecuyer



Kirstin Daigle



Patrick Kearney