



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**

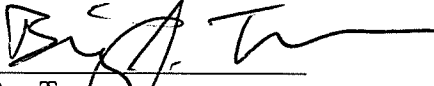
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 Travers  
Board Chair

cc: Edward Kammerer & Nicholas Wahlers  
Jean Moody

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

**In re: Request for Hearing of EDWARD )  
KAMMERER and NICHOLAS WAHLERS )  
Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by JEAN MOODY ) HOUSING BOARD OF REVIEW  
for Rental Unit at 62 Intervale Ave, #2 )**

**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. Petitioners Edward Kammerer and Nicholas Washlers were present and testified. Respondent Jean Moody was also present and testified. Also present was Steve Richard.

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 Jean Moody is the owner of a rental unit, 62 Intervale Avenue, #2, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Edward Kammerer moved into the rental unit September 1, 2014 and petitioner Nicholas Wahlers moved into the unit on September 1, 2015. Petitioners had another roommate who is not a party to this dispute. The most current lease ran from 9/1/15 to 5/31/16. Monthly rent was \$1320.00.
3. Petitioners each paid a security deposit of \$440.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on May 31, 2016.
5. On June 10, 2016, respondent sent a statement and check to each petitioner at their last known address (that being the address of the rental unit) because they did not provide her with a forwarding address. The post office returned both envelopes stamped, "return to sender, unclaimed, unable to

forward.” Upon receiving notice that petitioners had filed a request for hearing before this Board, respondent called the Board to get petitioners’ current mailing addresses. She then re-sent the statements and checks on June 21, 2016.

6. The statement itemized deductions totaling \$126.00. Respondent returned \$401.33 to Edward Kammerer, and \$391.33 to Nicholas Wahlers. Interest was not credited to the deposit. Respondent’s statement did not inform petitioners of their right to request a hearing before this Board to dispute the withholding of their deposits.

### **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. 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.<sup>1</sup> 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.

11. Petitioners are 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.

12. At hearing, petitioners further claimed that respondent's failure to properly return their security deposit was "willful." If that were the case, petitioners may be entitled to collect double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). It is clear from the evidence, however, that respondent did not withhold any portion of petitioners' deposit in bad faith and that she acted with due diligence to return that amount she believed was owed to them. Accordingly, petitioners' claim for double damages is denied.

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

**ORDER**

Accordingly, it is hereby ORDERED:

13. Petitioner Edward Kammerer is entitled to recover from respondent Jean Moody the following amounts:

a) \$38.67 of the principal amount of the security deposit improperly withheld after June 14, 2016; and

b) Interest in the amount of \$2.21 for the period September 1, 2014 through September 6, 2016.

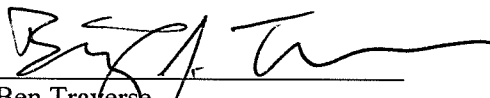
13. Petitioner Nicholas Wahlers is entitled to recover from respondent Jean Moody the following amounts:

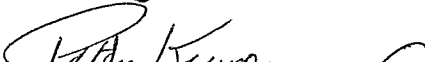
a) \$48.67 of the principal amount of the security deposit withheld after June 14, 2016; and

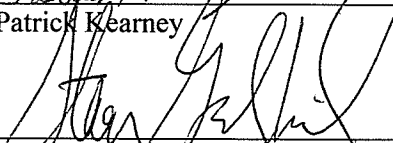
b) Interest in the amount of \$1.11 for the period September 1, 2015 through September 6, 2016.

DATED at Burlington, Vermont this 20<sup>th</sup> day of September, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Patrick Kearney

  
Steven Goodkind