



**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**

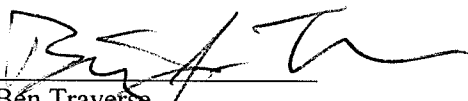
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/19/15

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Kevin Kerbs, Noah Johnson, Matthew Scinto  
Orchard Terrace Associates LLP

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

**In re: Request for Hearing of KEVIN KERBS, )  
NOAH JOHNSON and MATTHEW )  
SCINTO Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by ORCHARD ) HOUSING BOARD OF REVIEW  
TERRACE ASSOCIATES LLP for Rental )  
Unit at 28B Orchard Terrace )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on October 5, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Kevin Kerbs, Noah Johnson and Matthew Scinto were present and testified. Respondent Orchard Terrace Associates LLP was represented by Rick Sharp.

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 Orchard Terrace Associates LLP is the owner of a rental unit, 28B Orchard Terrace, in the City of Burlington which is the subject of these proceedings. Rick Sharp manages the property.
2. Petitioners Kevin Kerbs, Noah Johnson and Matthew Scinto moved into the rental unit with a lease which ran from September 1, 2014 to May 31, 2015.<sup>1</sup> Monthly rent was \$650.00 per person.
3. Petitioners paid a security deposit of \$650.00 each 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 June 1, 2015.
5. On June 12, 2015, respondent mailed a statement to Kevin Kerbs and to Matthew Scinto at their last-known addresses; Mr. Kerbs' statement was sent by certified mail and Mr. Scinto's statement

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<sup>1</sup> A fourth tenant on the lease, Forrest Angelillo, is not a party to this proceeding.

was sent by first-class mail. Respondent withheld \$180.00 from Mr. Scinto's deposit and returned \$471.00 to him. Respondent itemized deductions totaling \$1080.00 from Mr. Kerbs' deposit so that no deposit money was returned to him. Interest in the amount of \$1.00 was credited to each deposit.

6. On June 22, 2015, respondent mailed a statement to Noah Johnson at his last-known address. Respondent withheld \$180.00 from Mr. Johnson's security deposit and returned \$471.00 to him. Interest in the amount of \$1.00 was credited to his deposit.

7. On or about July 3, 2015, respondent sent an additional check for \$150.00 to Noah Johnson.

8. On or about August 2, 2015, respondent sent a revised statement to Kevin Kerbs. That statement itemized deductions totaling \$610.05. Consequently, respondent returned \$40.95 of Mr. Kerbs' deposit to him.

9. None of respondent's statements included notice to the tenants of their opportunity to request a hearing before this Board.

### **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 last-known 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).

13. A landlord who decides to retain all or part of a security deposit must comply with the 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 mailed to the tenant's forwarding address. *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 inform petitioners of their appeal rights. In addition, respondent did not send timely notice to Noah Johnson. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposits.

#### **ORDER**

Accordingly, it is hereby ORDERED:

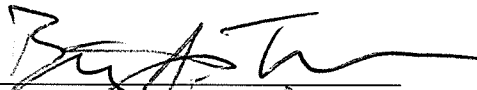
14. Petitioner Kevin Kerbs is entitled to recover from respondent Orchard Terrace Associates LLP \$610.05 of the principal amount of his deposit improperly withheld after June 14, 2015 plus additional interest of \$0.004 per day from June 15, 2015 until such date as the amount improperly withheld is returned to him.

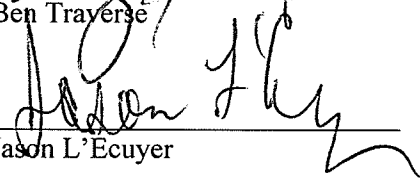
15. Petitioner Noah Johnson is entitled to recover from respondent Orchard Terrace Associates LLP \$30.00 of the principal amount of his deposit improperly withheld after June 14, 2015 plus additional interest of \$0.0002 per day from June 15, 2015 until such date as the amount improperly withheld is returned to him.

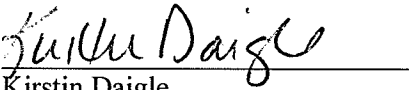
16. Petitioner Matthew Scinto is entitled to recover from respondent Orchard Terrace Associates LLP \$180.00 of the principal amount of his deposit improperly withheld after June 14, 2015 plus additional interest of \$0.001 per day from June 15, 2015 until such date as the amount improperly withheld is returned to him.

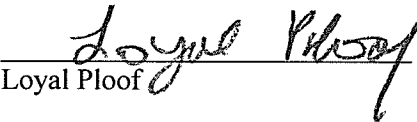
DATED at Burlington, Vermont this 19<sup>th</sup> day of October, 2015.

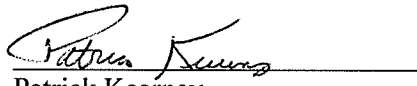
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