



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 1/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverser
Board Chair

cc: Diane Leary
New Northgate Housing LLC

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

**In re: Request for Hearing of DIANE LEARY)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by NEW NORTHGATE HOUSING) HOUSING BOARD OF REVIEW
LLC for Rental Unit at 401 Northgate Rd)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Diane Leary was present and testified. Respondent New Northgate Housing LLC was represented at the hearing by Sara Noth who testified.

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 New Northgate Housing LLC is the owner of a rental unit, 401 Northgate Road, in the City of Burlington which is the subject of these proceedings. Sara Noth is a property manager for respondent.
2. Petitioner Diane Leary moved into the rental unit on or about March 1, 1992 under the terms of a written lease. Monthly rent at the end of petitioner's tenancy was \$468.00.
3. Petitioner paid a security deposit of \$204.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on September 30, 2016.
5. On October 12, 2016, respondent sent a statement to petitioner itemizing deductions from the deposit, in accordance with ordinance requirements. Said statement itemized deductions totaling \$713.00, including \$468.00 in unpaid rent for September 2016; \$150.00 for additional coats of paint needed to cover the color of walls that had been painted by petitioner; and \$95.00 for previous damages to the unit,

including a hole on the stairway wall. Interest in the amount of \$2.60 was credited to the deposit. As the deductions exceeded the amount of the deposit (including interest), no money was returned to petitioner.

6. On September 1, 2016, petitioner went to respondent's office and provided written notice of her intent to vacate the apartment on or before October 1, 2016. At the same time, respondent provided petitioner with a "Landlord Certification" noting that petitioner was leaving the apartment in good standing; the purpose of the certification was to allow petitioner to continue receiving housing assistance. On September 7, Sara Noth sent petitioner a follow-up letter providing some move-out instructions. In the September 7 letter, Ms. Noth also reminded petitioner that she needed to pay September rent as the lease prohibited the deposit from being used as last month's rent. Despite the September 7 letter, petitioner believed she did not owe rent for the month of September, and thus she did not pay rent for that month.

7. Petitioner requested that the Board order respondent to return double the amount withheld on her belief that the deposit was willfully withheld. The basis of petitioner's argument is that she did not believe the deductions were proper.

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 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). Here, timely notice was properly provided.

11. Based on the evidence, the Board concludes that the deductions for additional coats of paint were unreasonable. Respondent had not painted the rental unit at any point during petitioner's 24-year tenancy. The work required was easily attributable to normal wear and tear. However, notwithstanding the unreasonableness of these deductions, the withholding for unpaid rent in September 2016 remains more than double petitioner's original security deposit.

12. Respondent's deduction for unpaid rent for September 2016 was proper. Petitioner lived in the apartment until September 30, 2016 and did not pay rent for that month, despite being reminded on September 7 that rent was still owed. There are no circumstances under which the "Landlord Certification" provided on September 1 can be reasonably construed as excusing petitioner's obligation to pay the September rent.

13. Petitioner also argued that the withholding of the deposit was willful. If the failure to return a 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). Respondent provided notice that satisfied statutory notice requirements. A dispute over the reasonableness of deductions is not evidence of willful withholding of a deposit. The Board concludes the deposit was not willfully withheld.

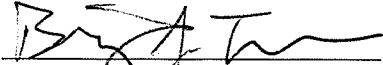
ORDER

Accordingly, it is hereby ORDERED:


14. Petitioner's request for relief is DENIED.

Dated at Burlington, Vermont this 18th of January, 2017.

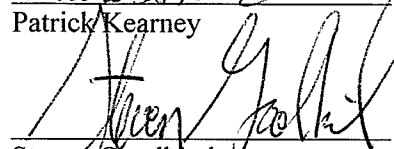
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Ben Traverse



Patrick Kearney



Steven Goodkind