



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 9/3/15

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Kirstin Daigle  
Board Chair

cc: Stephen Maglio  
CC Associates

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

**In re: Request for Hearing of STEPHEN )  
MAGLIO, SEAN CONSIDINE, ALEX )  
IVANCIA, DAVID EISEN, DANA KLASKY,) CITY OF BURLINGTON  
RYAN JORY and SOFIE FIERRO ) HOUSING BOARD OF REVIEW  
Regarding Withholding of Security )  
Deposit by CC ASSOCIATES for Rental )  
Unit at 11 Hickok Place )**

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

The above-named hearing came before the Housing Board of Review on August 3, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Ryan Jory, Alex Ivancia and David Eisen were present and testified. Respondent CC Associates was represented at the hearing by Ginny Kolbenson. Also appearing as witnesses were Paul Kolbenson and Robert Thibault.

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 CC Associates is the owner of a rental unit, 11 Hickok Place, in the City of Burlington which is the subject of these proceedings. Ginny Kolbenson manages the property.
2. Petitioners moved into the rental unit with a lease which ran from June 1, 2014 to May 25, 2015.
3. Petitioners paid a security deposit of \$4200.00 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 22, 2015.
5. On June 3, 2015, respondent sent a written statement, by certified mail, to Stephen Maglio's forwarding address in conformance with ordinance requirements. Said statement itemized deductions totaling \$3628.58. Interest in the amount of \$4.20 was credited to the deposit and there was a credit of

\$547.11 for overpayment of rent in July, 2014. The amount of the security deposit returned to petitioners (through Stephen Maglio) was \$1122.73.

6. Both parties testified concerning the fire extinguisher which appeared as a \$35.00 deduction on the itemized statement. Between each tenancy the fire extinguishers are checked to make sure they are in working condition; generally, the extinguishers are replaced every 2 to 3 years. The extinguisher in the first floor kitchen needed to be replaced because it was dispensed. Petitioners were adamant that they did not use the extinguisher.

7. Both parties testified concerning the 2<sup>nd</sup> floor kitchen cabinet door which appeared as a \$95.86 deduction on the itemized statement. The cabinet door was broken off the hinges. Petitioners testified the door came off the hinges through no fault of theirs. The door looked as though it had been kicked in. The Board specifically finds the damage occurred during petitioners' tenancy. There were no receipts evidencing the cost to replace the door.

8. Both parties testified concerning painting which appeared as a \$2047.32 deduction on the itemized statement. The interior of the house was painted prior to petitioners' move-in date. At the end of the tenancy, there were stains on the walls, large nails stuck in some walls, and stickers and tape on some walls. Although some walls were spot painted, many walls needed to be repainted. In addition, a hole in the 1<sup>st</sup> floor bedroom wall needed to be patched and it was necessary to sand off tape residue from a wall. Petitioners acknowledged that some painting was necessary. There were no invoices submitted for the work that was done.

9. Both parties testified concerning the fire-rated, metal door which appeared as a \$750.00 deduction on the itemized statement. The parties gave conflicting evidence as to whether or not the door was there at the beginning of the tenancy – Ginny Kolbenson testified it was while petitioners testified it was not. There was no move-in inspection indicating the condition of the apartment at the beginning of the tenancy. Petitioners submitted a photo date-stamped June 1, 2014 showing there was no door there.

10. Other deductions indicated in the itemized statement were not contested.

## **CONCLUSIONS OF LAW**

11. 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.

12. 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.

13. 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 within 14 days. 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 provided.

14. Based on the evidence, the Board concludes the deductions for the fire extinguisher and for the fire door were not proper. There was insufficient evidence to conclude that petitioners used the fire extinguisher. The fire door was not there at the beginning of the tenancy so it was not proper to charge petitioners for a new fire door.

15. Based on the evidence, the Board concludes a deduction for both the cabinet door and painting were proper as the damage was attributable to petitioners. However, there were no receipts provided for the work done. Consequently, the Board concludes a reasonable deduction for the cabinet door is \$40.00 and a reasonable deduction for painting attributable to petitioners is \$1364.88.

**ORDER**

Accordingly, it is hereby ORDERED:

16. Petitioner Stephen Maglio (on behalf of all the tenants) is entitled to recover from respondent CC Associates the following amounts:

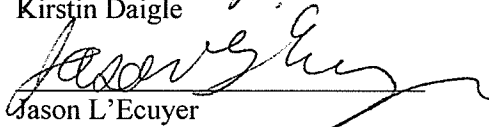
a) \$1523.30 of the principal amount of the security deposit improperly withheld after June 5, 2015; and

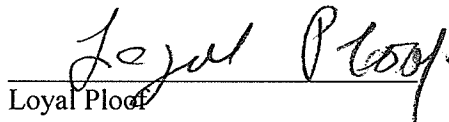
b) Additional interest of \$0.004 per day from June 6, 2015 until such date as the amount improperly withheld is returned to petitioner.

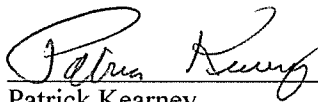
DATED at Burlington, Vermont this 3<sup>rd</sup> day of September, 2015.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Kirstin Daigle

  
\_\_\_\_\_  
Jason L'Ecuyer

  
\_\_\_\_\_  
Loyal Ploof

  
\_\_\_\_\_  
Patrick Kearney