



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

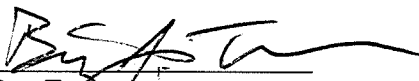
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/20/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Maia Menzel
Andrew Swayze

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

**In re: Request for Hearing of MAIA MENZEL)
and CAITLIN THORNTON Regarding)
Withholding of Security Deposit by) CITY OF BURLINGTON
ANDREW SWAYZE for Rental Unit at) HOUSING BOARD OF REVIEW
66 Catherine Street)**

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 Maia Menzel and Caitlin Thornton were present and testified. Respondent Andrew Swayze was also present.

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 Andrew Swayze is the owner of a rental unit, 66 Catherine Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Maia Menzel and Caitlin Thornton and their roommate, Heather Canavari, moved into the rental unit on July 15, 2014 under the terms of a written lease. Monthly rent was \$2600.00.
3. Petitioners paid a security deposit of \$2600.00 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 June 30, 2015.
5. On July 1, 2015, respondent emailed petitioners about damage to the floors and doors for which he was withholding part of the security deposit: \$750.00 for the floors and \$350.00 for the doors. On July 11, 2015, respondent returned \$1500.00 of the deposit to petitioners. Respondent did not inform petitioners of their right to dispute the withholding of their deposit to this Board. Petitioners argued that

the notice provided to them was not proper, and therefore, respondent should be ordered to return that part of the deposit withheld.

6. Interest was not credited to the deposit.

7. Both parties testified concerning the floors which appeared as a \$750.00 deduction on the written statement. Respondent had the wood floors in the apartment refinished due to damage allegedly caused by petitioners' 2 dogs. Respondent pointed out the damage to petitioners during 2 walkthroughs of the apartment. Respondent took into account preexisting damage and charged petitioners one quarter of the cost to refinish the floors. Respondent believed petitioners had agreed to this deduction when they discussed it during one of the walkthroughs.

8. Petitioners did not dispute the deduction for the doors.

CONCLUSIONS OF LAW

9. 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.

10. 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.

11. 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).

12. 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 mailed to the tenant's last-known 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. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. The Board's ruling noted above is a technical one. Based on the ordinance and case law, the Board must rule that respondent forfeited the deposit by his failure to comply with the ordinance. However, had the Board been able to rule on the merits, we would have concluded that the deductions were reasonable as the damage to the floors and doors was attributable to petitioners.¹

14. 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.

¹ Respondent retains the right to separately seek relief before the small claims court.

ORDER

Accordingly, it is hereby ORDERED:

15. Petitioners Maia Menzel and Caitlin Thornton are entitled to recover from respondent Andrew Swayze the following amounts:

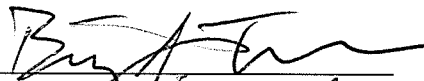
a) \$1100.00 of the principal amount of the security deposit improperly withheld after June 14, 2015;

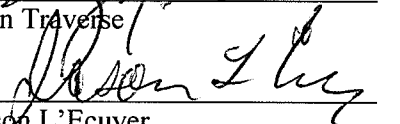
b) Interest in the amount of \$5.97 on the entire deposit for the period July 15, 2014 through June 14, 2015; and

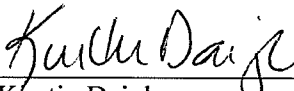
c) Additional interest of \$0.007 per day from June 15, 2015 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 20th day of October, 2015.

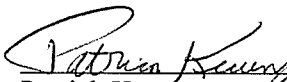
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