



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**

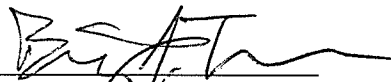
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 12/8/15

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverser  
Board Chair

cc: Sandra Merkel  
George Harrington

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

**In re: Request for Hearing of SANDRA )  
MERKEL Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by GEORGE ) HOUSING BOARD OF REVIEW  
HARRINGTON for Rental Unit at 67 )  
Cedar Street, #2 )**

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

The above-named hearing came before the Housing Board of Review on November 16, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Sandra Merkel was present and testified. Respondent George Harrington 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 George Harrington is the owner of a rental unit, 67 Cedar Street, #2, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Sandra Merkel moved into the rental unit with a lease which ran from November 1, 2014 to October 31, 2015.
3. Petitioner paid a security deposit of \$900.00 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 1, 2015.
5. On September 12, 2015, respondent sent a written statement to petitioner's last-known address informing petitioner that the deposit was being withheld. Said statement itemized deductions totaling \$1030.00.
6. Interest in the amount of \$7.00 was credited to the deposit.

7. Both parties testified concerning unpaid rent which appeared as a \$360.00 deduction on the itemized statement. Petitioner moved out before the lease expired and gave respondent 14 days advanced notice of her move-out date. Due to the lack of notice, respondent did not have a new tenant for the apartment when petitioner moved out. Therefore, respondent deducted 12 days of rent from the deposit for the period that the apartment was empty.

8. Both parties testified concerning damage to the linoleum floor in the kitchen which appeared as a \$400.00 deduction on the itemized statement. The floor was relatively new when petitioner moved into the apartment. At the end of the tenancy, there were several marks and gouges in the linoleum. Petitioner did not know how the damage occurred, but she informed respondent of the marks each time they occurred. The floor has not been repaired; respondent's deduction is his estimate of the depreciated value of the floor caused by the marks.

9. Both parties testified about charges for cleaning in the kitchen which appeared as a \$150.00 deduction on the itemized statement. Respondent spent 3 hours cleaning in the kitchen and charged \$50/hour for his time to clean. Respondent cleaned the refrigerator, the shelves, and the walls and doors which were covered in plastic tape that needed to be removed. Petitioner believed she did an adequate job cleaning before she moved out.

10. Both parties testified concerning the bathroom sink which appeared as a \$100.00 deduction on the itemized statement. Respondent replaced the bathroom sink because it was stained. During petitioner's tenancy, the sink dripped leaving rust marks in it. The sink was approximately 10-15 years old.

11. Both parties testified concerning unreturned keys to the apartment which appeared as a \$20 deduction on the itemized statement. The keys were not returned to respondent. Petitioner claimed she left the keys on the kitchen counter.

## **CONCLUSIONS OF LAW**

12. 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.

13. 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.

14. 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 certified 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). Timely notice was provided.

15. Based on the evidence, the Board concludes the deductions for unpaid rent and the keys were proper and reasonable. In addition, the Board concludes the linoleum floor was damaged during petitioner's tenancy; however, the Board finds a reasonable deduction for the damage attributable to petitioner is \$100.00. Lastly, the Board concludes respondent needed to clean the kitchen after petitioner moved out. However, the Board concludes a reasonable charge for cleaning is \$30/hour; therefore, a deduction of \$90.00 for cleaning was proper.

16. Based on the evidence, the Board concludes the deduction for the bathroom sink was not proper. The sink was old and depreciated in value, and the damage was caused by a dripping faucet.

**ORDER**

Accordingly, it is hereby ORDERED:

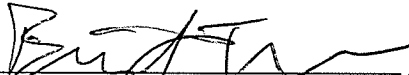
17. Petitioner Sandra Merkel is entitled to recover from respondent George Harrington the following amounts:

a) \$337.00 of the principal amount of the security deposit improperly withheld after September 15, 2015; and

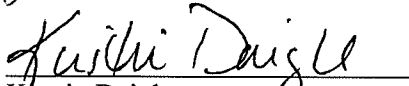
b) Additional interest of \$0.002 per day from September 16, 2015 until such date as the amount improperly withheld is returned to petitioner.

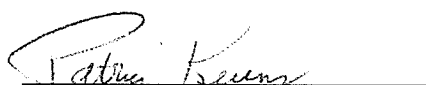
DATED at Burlington, Vermont this 8<sup>th</sup> day of December, 2015.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Jason L. Ecuier

  
Kirstin Daigle

  
Patrick Kearney