



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 “Amended 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 1/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Kelsey Miller
Lyndsay Kelsey
August Koch
Caitlin Houlihan
Chris Khamnei

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

**In re: Request for Hearing of KELSEY)
MILLER, AUGUST KOCH, LYNSDAY)
KELSEY and CAITLIN HOULIHAN) CITY OF BURLINGTON
Regarding Withholding of) HOUSING BOARD OF REVIEW
Security Deposit by CHRIS KHAMNEI)
for Rental Unit at 395 College St, Apt. 2)**

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2015. For purposes of expedition Board Members Kirstin Daigle and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter. Petitioners Kelsey Miller, August Koch, Lyndsay Kelsey and Caitlin Houlihan were present and testified. Respondent Chris Khamnei was also present and testified. Appearing and testifying as witnesses were David McGee, Bill Ward and Patti Wehman.

The Board issued their decision on November 16, 2015. However, it was brought to the attention of the Board that there was an error in the Findings and Order of November 16. Specifically, the amount of the deposit was \$800.00 per room, not person. Consequently, the amount ordered returned to the tenants was incorrect. Therefore, in order to correct the error, the Board is issuing this Amended Findings of Fact, Conclusions of Law, and Order.

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 Chris Khamnei is the owner of a rental unit, 395 College Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. David McGee is the property manager.

2. Petitioners Kelsey Miller, August Koch, Lyndsay Kelsey and Caitlin Houlihan moved into the rental unit on June 1, 2015 under the terms of a written sublease agreement. Monthly rent was \$800.00 per room with rent payable to respondent.

3. Petitioners paid a security deposit of \$800.00 per room to respondent. Petitioners Kelsey Miller and Lyndsay Kelsey each paid \$800.00 to respondent for a deposit. Petitioners August Koch and Caitlin Houlihan shared a room so they paid \$400.00 each (a total of \$800.00 for the room) to respondent for a deposit. 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 August 22, 2015.

5. On August 31, 2015, respondent sent a written statement to petitioners informing them that their deposits were being withheld for damages and lost rent. Interest was not credited to the deposits.

6. The basis of respondent's withholding of the deposits was his allegation that unreported damage led to the permanent tenants terminating their lease with respondent. The permanent tenants did not move into the apartment because of the condition of it. At issue was mold and water damage in the bathroom which respondent claimed was not reported by petitioners. However, in an email sent to David McGee in June 2015, Kelsey Miller reported a leak coming up from the floor of the bathroom; in addition, she requested instructions on how to use the dehumidifier located in the basement. (The kitchen, bathroom, a bedroom and laundry room are located in the basement of the apartment.) Respondent denied that any leaks were coming up through the floor, but explained them as being caused by a window left open in the basement bedroom. During the time petitioners lived in the apartment, the basement bedroom was locked and they did not have access to it.

CONCLUSIONS OF LAW

7. 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.

8. 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.

9. 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. 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.

10. Based on the evidence, the Hearing Officers conclude that the withholding of petitioners' deposits was not proper. Respondent is holding petitioners responsible for the failure of the permanent tenants to move into the apartment because of the condition of it. However, petitioners reported the leak in the bathroom to respondent. To the extent respondent blames the leak on an open window in the basement bedroom, petitioners are not responsible for that situation as they did not have access to that bedroom during their tenancy and had no way of knowing whether or not there was an open window in that bedroom.

ORDER

Accordingly, it is hereby ORDERED:

11. Petitioners Kelsey Miller and Lyndsay Kelsey are entitled to recover from respondent Chris Khamnei the following amounts:

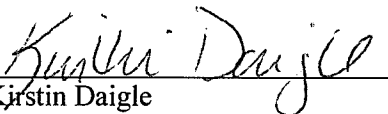
- a) \$800.00 each – the principal amount of the security deposit; and
- b) \$0.005 per day on each deposit from June 1, 2015 until such date as the amount improperly withheld is returned to them.

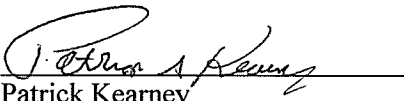
12. Petitioners August Koch and Caitlin Houlihan are entitled to recover from respondent Chris Khamnei the following amounts:

- a) \$400.00 each – the principal amount of the security deposit; and
- b) \$0.003 per day on each deposit from June 1, 2015 until such date as the amount improperly withheld is returned to them.

DATED at Burlington, Vermont this 20th day of January, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Hearing Officer


Patrick Kearney
Hearing Officer