



HOUSING BOARD OF REVIEW

City of Burlington

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(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 25 October 2017

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Samantha Lednicky, Esq.
Richard Leonard

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

In re: Request for Hearing of Ian Moore)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by Richard Leonard) HOUSING BOARD OF REVIEW
for Rental Unit at 515 North Street)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse recused himself from the proceeding. Thus, Board Members Josh O’Hara and Patrick Kearney were appointed to serve as Hearing Officers for the hearing pursuant to City Ordinance provisions. Petitioner Ian Moore, represented by attorney Samantha Lednicky, was present and testified. Respondent Richard Leonard was also present and testified. Also appearing as witnesses were Cully Brown, Alex English and Katherine Kyser.

Upon consideration of the evidence and the applicable law, the Hearing Officers make the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent Richard Leonard is the owner of a rental unit, 515 North Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Ian Moore moved into the rental unit with a lease which ran from June 2, 2016 to May 28, 2017; respondent shared the unit with 3 other people. Monthly rent was \$2900.00.
3. Petitioner and his roommates paid a security deposit of \$2900.00 to respondent; petitioner’s share of the deposit was \$725.00. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. At the end of the tenancy, petitioner arranged to live in the unit during July and August, 2017. Consequently, when petitioner left the rental unit in May, he left his possessions in his room (with respondent’s consent) so that they would be there when he returned in July. According to respondent,

petitioner's security deposit was transferred for the new lease agreement, an agreement that petitioner never saw.

5. Petitioner moved back into the rental unit on or about July 17, 2017. Upon his arrival he discovered that one of the new tenants had a cat and that his room was covered in cat hair. Petitioner discovered that he was very allergic to the cat and unable to stay in the unit as planned. On July 18, petitioner notified respondent that he needed to move out of the unit due to the cat. On July 19, 2017 moved out of the unit. On July 20, respondent acknowledged knowing petitioner's plans with respect to moving out of the unit.

6. Respondent did not return petitioner's deposit to him nor did he provide a written statement to petitioner itemizing deductions from it. Respondent was unaware of his obligations regarding the return of the deposit since he does not customarily require a security deposit from tenants. Respondent applied petitioner's deposit to rent for June, 2017, believing that he was entitled to collect rent for that month. Petitioner was unaware that respondent expected him to pay for rent for June when he wasn't living there; it was petitioner's understanding that he was only paying for 1 month's rent (July 17-August 11).

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 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).

10. 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 sent by certified mail.¹ 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 return the deposit to petitioner with a written statement itemizing deductions from it within 14 days and by failing to provide petitioner with notice of his appeal rights. Therefore, the Hearing Officers conclude respondent forfeited the right to withhold any part of the deposit.

11. Both city ordinance and state law provide that 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) and 9 V.S.A. Sec. 4461(e). Petitioner argued that respondent's failure to return the deposit and send a statement was willful. The Hearing Officers conclude the failure to return the deposit and provide notice was not willful: respondent believed he was within his rights to

¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

withhold the deposit for rent and was unfamiliar with the obligations concerning the withholding of a security deposit.

12. Petitioner is 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.

ORDER


Accordingly, it is hereby ORDERED:

13. Petitioner Ian Moore is entitled to recover from respondent Richard Leonard the following amounts:

- a) \$725.00 of the principal amount of his security deposit improperly withheld after August 3, 2017;
- b) Interest in the amount of \$2.12 on the entire deposit for period June 2, 2016 to August 3, 2017; and
- c) Additional interest of \$0.005 per day from August 4, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 25th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Patrick Kearney
Hearing Officer


Josh O'Hara
Hearing Officer