



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 7/3/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Joan Novelli
Timothy McCall

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

**In re: Request for Hearing of JOAN NOVELLI)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by TIMOTHY McCALL for) HOUSING BOARD OF REVIEW
Rental Unit at 99 Haward Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 4, 2018. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Josh O’Hara, Alec Bauer and Steven Goodkind were also present. Petitioner Joan Novelli was present and testified. Respondent timothy McCall was also present and testified. Also appearing and testifying as a witness was Mark Stephenson.

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 Timothy McCall sublet his apartment at 99 Hayward Street to petitioner for the period November 12, 2017 to March 31, 2018 when he was out of the country. Mark Stephenson and Linda Jones are the owners of the property, 99 Hayward Street, in the City of Burlington which is the subject of these proceedings. Respondent had permission from the owners of the property to sublet his apartment.

2. Petitioner paid a security deposit of \$1500.00 to respondent; subsequently, the deposit was reduced to \$1000.00. Petitioner was to receive back her security deposit at the end of the tenancy minus any amounts withheld for damages.

3. Without respondent’s permission, petitioner broke her sublease and vacated the apartment on January 31. At or around the time of moving out, petitioner and respondent engaged in email correspondence by which petitioner demanded the return of her security deposit. The parties agreed to resolve any dispute related to the security deposit upon respondent returning to Vermont.

4. When respondent was back in Vermont, petitioner emailed him to follow-up on the status of her security deposit. On April 7, respondent emailed petitioner informing her that the deposit would not be returned; he itemized deductions totaling \$1746.40. The statement did not inform petitioner of her opportunity to request a hearing before this Board to dispute the withholding of the deposit.
5. On May 15, petitioner filed a request for hearing related to the withholding of her deposit.

CONCLUSIONS OF LAW

6. 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.
7. 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.
8. 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).
9. When, as here, the landlord fails to provide timely notice of withholding, the applicable period of limitations to request a hearing is extended to 44 days after the date the tenant vacated the rental unit. Minimum Housing Code Sec. 18-120(e).
10. At the hearing, petitioner argued the 44-day period of limitations should have commenced on the date her sublease was scheduled to expire, or March 31. City ordinance clearly states, however, that the time period for a tenant to request a hearing before this Board begins when the tenant vacates the rental unit. In other words, petitioner had 44 days from the date she vacated the apartment to file her

request for hearing, or until March 16. Even if the Board accepted petitioner's argument that March 31 should have been the date on which the 44-day period of limitations commenced, May 14 would have been the last date on which she could have timely requested a hearing. Petitioner filed her request on May 15. The Board concludes petitioner did not file her request for hearing on time and, thus, we do not have jurisdiction to hear the case.¹

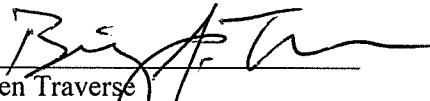
ORDER

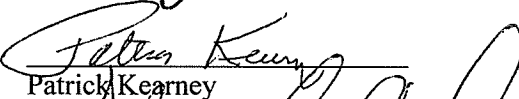
Accordingly, it is hereby ORDERED:

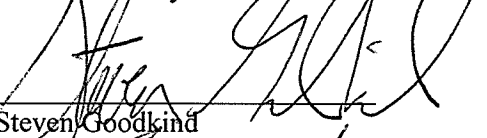
11. Petitioner Joan Novelli's request is DISMISSED for failure to file a timely request for hearing.

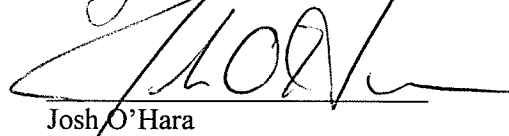
Dated at Burlington, Vermont this 3rd day of July, 2018.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind


Josh O'Hara


Alec Bauer

¹ The periods of limitations set forth under Minimum Housing Code Sec. 18-120(e) apply only to requesting hearings before the Board. This order should not be construed as precluding petitioner from electing to seek relief through the Small Claims Court. Similarly, respondent's failure to provide timely notice of withholding does not preclude his right to pursue an action in Small Claims Court for damages allegedly caused by petitioner.