



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 8/7/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Katja Ostojic
W.L. Shriner

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

In re: Request for Hearing of KATJA)
OSTOJIC Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by W.L. SHRINER) HOUSING BOARD OF REVIEW
for Rental Unit at 37 N. Prospect St, #3)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 16, 2018. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Josh O’Hara, Steven Goodkind and Patrick Murphy were also present. Petitioner Katja Ostojic testified via telephone conference call. Respondent W. L. Shriner was also present and testified. Appearing and testifying as a witness was John Bethune.

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 W.L. Shriner is the owner of a rental unit, 37 N. Propect Street, #3, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Katja Ostojic and Erin Hall moved into the rental unit with a lease which ran from June 1, 2017 to May 31, 2018. Monthly rent was \$1530.00.
3. Petitioner and Ms. Hall paid a security deposit of \$1530.00 to respondent; they were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and Erin Hall vacated the apartment by May 28, 2018 and all the keys were returned on that date.
5. On June 11, 2018, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement itemized deductions totaling \$690.00. The statement indicated \$896.60 was to be returned to petitioner; however, respondent only returned \$690.60. At the hearing, respondent acknowledged his error.

6. Both parties testified with respect to cleaning the floor and baseboards which appeared as a \$45 deduction on the itemized statement. Respondent claimed there were scuff marks, food stains and dirt on the baseboards; in addition, he testified there was wax and tape on one of the bedroom floors. Petitioner and Erin Hall thoroughly cleaned the apartment before moving out, as evidenced by photographs submitted into evidence. Petitioner also argued that even if the baseboards needed to be cleaned such cleaning was part of normal wear and tear. Petitioner did not put any wax or tape on her bedroom floor and she was not aware of anything on the floor when she moved out.

7. Both parties testified with respect to the rubbish which appeared as a \$20 deduction on the itemized statement. The deduction was for respondent's time to sort through the garbage, claiming there was compost and recyclables in it, and a fine he levied. In early July, 2017, petitioner set out the recycle bin and a trash bag at the curb for pickup, believing that both were collected at the same time. Respondent notified petitioner and reminded her that only recycling was picked up; respondent collects garbage from his tenants when they have accumulated 2 bags of it and he disposes of the garbage himself. Respondent does not provide a trash receptacle for his tenants to use. Petitioner disputed the charge on the grounds that they made 1 simple error at the beginning of the tenancy; in addition, petitioner disputed the need to sort through their garbage. Petitioner was not notified of the charge or fine when it occurred in July, 2017.

8. Both parties testified with respect to the tack holes and depreciation for painting which appeared as a \$125 and \$100 deduction, respectively. Respondent claimed there were 169 tack holes in the walls throughout the apartment which he needed to countersink, fill and sand; the deduction of \$125 was for his time to do the work. The deduction of \$100 was for depreciation to the walls because they were newly painted when petitioner moved into the apartment. The lease provides "[n]o tacks, nails, hooks, or tape shall be placed on walls, ceilings, or floors." Petitioner acknowledged using small tacks to hang some items on the walls, though she disputed the number of holes; she also acknowledged the lease provision which she did not see until she received respondent's statement. Petitioner questioned the need to repair such small holes and wondered why respondent didn't mention the prohibition when he was in

the apartment at various times throughout the tenancy. Petitioner also would have fixed the holes herself had respondent pointed out the need to do so.

9. Both parties testified with respect to the charge for the internet which appeared as a \$25 deduction on the itemized statement. Conflicting testimony was presented with regard to the arrangement for internet service. Petitioner stated respondent agreed to pay for internet service because they were paying rent at a higher rate than what was advertised when they agreed to rent the apartment. Respondent testified he agreed to provide internet service to them at a reduced rate. Text messages between the parties indicate he agreed to \$20 for internet service even though the deduction was for \$25. When petitioner moved into the apartment he gave her the wi-fi password, but 1 month later petitioner told him she did not want it because it did not work. Respondent pays for internet service for the property and then charges the tenants to use his service; he does not have a set rate he charges, but makes it up as he goes along.

10. Both parties testified with respect to unpaid rent which appeared as a \$375.00 deduction on the itemized statement. Respondent claimed that he allowed petitioner to move in early in exchange for cleaning the stairway and hallway in a common area. Petitioner cleaned the hallway, but not the stairs because of the unexpected cleaning required inside the apartment when she moved in. Respondent agreed petitioner could move things into the apartment beginning on May 21, 2017, but requested she pile them in 1 spot in the apartment because work was still being done in the bathroom; respondent also told her she would need to have the utilities turned on. Petitioner complied with respondent's request, received keys to the apartment on May 21 and started moving some items into it. John Bethune confirmed that when he started working on the bathroom on May 22, there were belongings stacked in one of the rooms. At some point, respondent believed that petitioner started setting up the apartment. Mr. Berthune testified that petitioner's family was in the apartment on May 26 and 27 putting petitioner's belongings away. Petitioner acknowledged more belongings were being moved into the apartment, but she denied she was setting up the apartment or sleeping there. Petitioner asked if she could stay in the apartment overnight beginning on May 26, but respondent denied that request and told her she would need to wait until the

bathroom was finished before staying there. On May 30, 2017, respondent told petitioner she could begin staying in the apartment. Petitioner never understood that she would be charged any rent for moving in early and she did not agree to pay additional rent.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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). Proper notice was provided.

14. Based on the evidence and testimony, the Board concludes the deductions for cleaning, rubbish, internet and May 2017 rent were not proper. Cleaning done by respondent was part of normal wear and tear. The deduction for rubbish was not reasonable as petitioners only put a bag of rubbish at the curb because they mistakenly thought it was picked up on the same day as the recycling; in addition, respondent provided no trash receptacles for tenants to dispose of rubbish which appears to be in violation

of minimum housing requirements. The deduction for internet service was not reasonable because petitioner did not use it (because it didn't work). The deduction for May 2017 rent was not reasonable as there was no advance understanding about being charged rent to move items into the apartment early. In addition, petitioner did not start living in the apartment until respondent told her could.

15. Based on the evidence and testimony, the Board concludes a reasonable deduction to repair tack holes and for depreciation to the walls is \$45.00: 1.5 hours at \$30/hour for labor.

ORDER

Accordingly, it is hereby ORDERED:

16. Petitioner Katja Ostojic is entitled to recover from respondent the following amounts:


a) \$850.00 of the principal amount of the security deposit improperly withheld after June 11, 2018; and

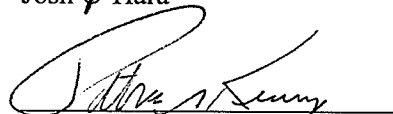
b) Additional interest of \$0.006 per day from June 12, 2018 until such date as the amount improperly withheld is returned to petitioner.


Dated at Burlington, Vermont this 7th of August, 2018.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Patrick Kearney


Steven Goodkind


Patrick Murphy