



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

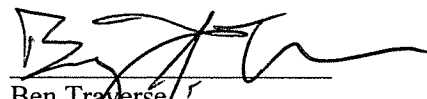
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/7/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Tom Rogers
Chris Mason

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

In re: Request for Hearing of TOM ROGERS)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by CHRIS MASON) HOUSING BOARD OF REVIEW
for Rental Unit at 37 Decatur St, #1)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 18, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Shawn Tao and Steven Goodkind were also present. Petitioner Tom Rogers was present and testified. Respondent Chris Mason was also present and testified.

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 Mason is the owner of 37 Decatur Street – Unit 1 which was rented as rental unit under a lease contract which is the subject of these proceedings.
2. Petitioner Tom Rogers, Rose McLaughlin and Hayley Maynes moved into the rental unit with a lease which ran from 9/1/2015 to 5/31/2016.
3. Petitioners paid a security deposit of \$2000.00. Rent for the 12 month lease was \$2000.00 per month. Under the terms of the lease, Petitioner(s) was to receive back the security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner Tom Rogers, Rose McLaughlin and Hayley Maynes moved out of the rental unit on May 31, 2016.
5. Petitioner Tom Rogers and Rose McLaughlin moved from 37 Decatur, Unit 1 and 37 Decatur, Unit 2 at the end of the term of the lease and, by agreement of the parties, \$1,333.34 of the security deposit was applied to their new lease.

6. Respondent withheld \$291.00 of the remaining security deposit for repairs as well as \$86.85 for a utility balance which when offset by \$.93 interest on the deposit, resulted in a check for \$289.74 of the remaining security deposit being issued.

7. The parties agreed that the itemized list of deductions from the security deposit and the check where issued in accordance with all legal requirements.

8. The Petitioner did not dispute the \$86.85 deducted for a utility balance.

9. The Petitioner testified that Hayley Maynes had done a walk-through of the unit at the end of the lease term and had received assurance from Respondent that the unit was in order and that no deductions would be taken for cleaning or damage to the unit.

10. Respondent did not deny the conversation with Hayley Maynes but discovered later that day (and prior to any new tenant taking possession of the unit) that there was trim and striker damage by the doorway which required replacement and repair. Respondent provided photographic evidence of the damage and an invoice for repair work of \$145.50 ((\$48.50 per hour for three hours work to remove and replace damaged interior trim at entry door and patch the jamb); Sanding, caulking and painting costs of \$115.50 (\$38.50 for three hours); and material costs of \$30 for 14 feet of interior trim, miscellaneous paint and sundries.

11. Petitioner stated that he did not believe that the damage was beyond normal “wear and tear” and that he had been led to believe that no deduction for damage or cleaning was going to be made.

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. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120 (c), includes language mandating the manner for providing a departed tenant with a written statement which itemizing all deductions withheld from a security deposit; specifically it states that "[t]he landlord shall comply with this section by hand-delivering or sending by certified mail the statement and any payment required to the last-known address of the tenant, which may be the rental unit if no forwarding address has been provided."

15. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold the full amount of the security deposit or any portion thereof; because:

a) The Board finds that the trim and striker damage exceeded normal wear and tear" and that the damage occurred while the unit was in the dominion and control of Petitioner and that therefore Petitioner should be responsible for the repairs.

b) The Board, however, finds that some the charges for the repairs were excessive and not reasonable. The Board finds that based on the evidence presented the charge of \$48.50 per hour for the removal and replacement of the damaged interior trim and patching the jamb should not have cost more than \$30.00 per hour and should not have taken more than an hour and a half and will therefore find a deduction of \$45.00 instead of \$145.50 is reasonable for those repairs and will order reimbursement of \$100.50 for improper deduction.

c) The Board also finds that charging \$38.50 per hour for sanding, caulking and painting the door jamb was excessive and not reasonable and that such work based on the evidence presented should not have taken more than an hour of time and therefore find a deduction of \$30.00 instead of \$115.50 is reasonable for those repairs and will order reimbursement of \$85.50 for improper deduction.

d) The Board finds that the charge of \$30.00 for materials is reasonable.

ORDER

Accordingly, it is hereby ORDERED:

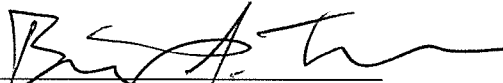
16. Petitioner Tom Rogers is entitled to recover from respondent Chris Mason the following amounts:

a) \$186.00 of the principal amount of the security deposit improperly withheld after June 14, 2016; and

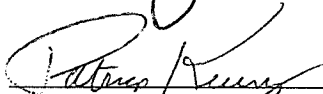
b) Additional interest of \$0.001 per day from June 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 7th day of September, 2016.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW




Ben Traverse



Patrick Kearney



Shawn Tao



Steven Goodkind