



HOUSING BOARD OF REVIEW

City of Burlington

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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 3/17/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Meghan Seifert
Kerry DeWolfe

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

**In re: Request for Hearing of MEGHAN)
 SEIFERT Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by KERRY DeWOLFE) HOUSING BOARD OF REVIEW
 for Rental Unit at 254 Manhattan Drive)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on February 17, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Meghan Seifert was present and testified. Respondent Kerry DeWolfe, although notified of the hearing and the opportunity to be heard, was not present. Also appearing and testifying as witnesses were Phyllis Martin and Jonathan Martin.

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 Kerry DeWolfe is the owner of a rental unit, 254 Manhattan Drive, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Meghan Seifert and her roommate moved into the rental unit on April 1, 2014 under the terms of a written lease.
3. Petitioner paid a security deposit of \$900.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and her roommate vacated the apartment on December 31, 2014. Upon vacating the premises, petitioner sent an email to respondent informing her of such; the keys to the apartment were left on the kitchen counter. Prior to moving out, petitioner and respondent exchanged some emails about the return of the security deposit. At that time, respondent indicated she would be deducting the cost of petitioner's December utility bills from the deposit. Petitioner understood she was responsible for the

utility bills, per the terms of the lease, and requested that respondent provide bills for the exact utility costs.

5. One week after petitioner moved out, on January 7, 2015, respondent sent an email informing her that she did not intend on returning the deposit because the pipes in the apartment froze and burst causing damage in the apartment. Respondent believed the damage was caused by either petitioner or her roommate unplugging the electric heater in the apartment prior to moving out. On January 9, 2015, petitioner responded to respondent's email and denied responsibility for damage which occurred after she and her roommate vacated the apartment; she again requested the return of the security deposit. On January 10, 2015, by email, petitioner once more requested that respondent return the security deposit to her; petitioner provided her forwarding address in that email. Petitioner's emails also requested that respondent provide documentation to support her claim for damages.

6. Respondent never returned any deposit money to petitioner. Respondent also did not hand-deliver or send by mail an itemized list of deductions from the deposit. Additionally, respondent never informed petitioner of her right to appeal the withholding of her deposit to this Board.

7. Petitioner argued that respondent's withholding of the deposit was willful. Petitioner requested the return of her deposit, as well as documentation of the damages, in several emails. In addition, she repeatedly disputed that she or her roommate caused any damage in the apartment.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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 to the last-known address of the tenant. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord automatically forfeits the right to withhold any portion of the deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). If the failure to return the deposit with a statement within 14 days is willful, the landlord shall be liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

11. 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 mail to the last-known address of the tenant. *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 automatically forfeits the security deposit. In this case, respondent failed to comply with the notice requirements by failing to hand-deliver or mail an itemized statement within 14 days and by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. Additionally, the Board concludes respondent's failure to return the deposit and written statement was willful. Although the term "willful" is not defined by applicable law, the standard legal

definition of the term is an act that is “voluntary and intentional, but not necessarily malicious.” Black’s Law Dictionary 1630 (8th ed. 2004). This definition is consistent with the term’s usage in Vermont’s jurisprudence. See, e.g., *State v. Penn*, 2003 VT 110, ¶ 9, 176 Vt. 565 (mem.) (defining a willful act as one done “purposefully and intentionally, and not by accident, mistake or inadvertence”). The Board must presume that respondent was aware of her legal responsibilities as a landlord, including, but not limited to the requirement to strictly abide by applicable notice requirements. When respondent chose to retain the security deposit beyond the 14-day period to provide proper notice, she acted in disregard of the fact that she had automatically forfeited any and all right to do. Moreover, it bears reiterating that respondent refused to return the deposit and never provided any written statement itemizing deductions from the deposit, despite numerous requests made by petitioner for the return of her deposit; indeed, on several occasions, petitioner specifically requested that respondent provide an accounting of the damages, but no statement was provided. Under these circumstances, respondent’s “willful” retention of the security deposit warrants the awarding of double damages to petitioner.

13. Furthermore, 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:

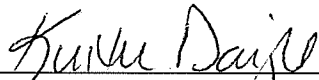
14. Respondent Meghan Seifert is entitled to recover from respondent Kerry DeWolfe the following amounts:

- a) \$1800.00, double the amount of the deposit willfully withheld;
- b) Interest in the amount of \$1.73 on the entire deposit for the period April 1, 2014 through January 14, 2015; and


c) Additional interest of \$0.006 per day from January 15, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 17th day of March, 2015.

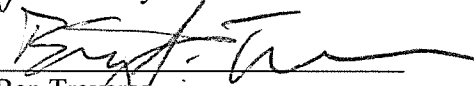
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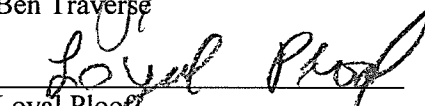
Kirstin Daigle



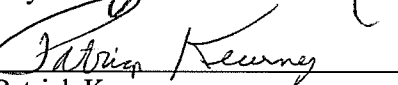
Jason L'Ecuyer



Ben Traverse



Loyal Plooff



Patrick Kearney