



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

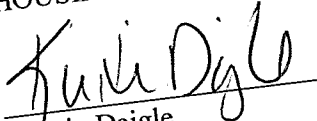
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 2/9/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Olga Sideleva
First Vermont Properties LLC

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

**In re: Request for Hearing of OLGA)
SIDELEVA Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by FIRST VERMONT) HOUSING BOARD OF REVIEW
PROPERTIES LLC for Rental Unit at)
103 N. Winooski Avenue, Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 5, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Olga Sideleva was present and testified. Respondent First Vermont Properties LLC was represented by Evan Stainman.

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 First Vermont Properties LLC is the owner of a rental unit, 103 N. Winooski Avenue, Apt. 1, in the City of Burlington which is the subject of these proceedings. Evan Stainman manages the property.
2. Petitioner Olga Sideleva moved into the rental unit on December 1, 2010 under the terms of a written lease. Monthly rent was \$1250.00.
3. Petitioner paid a security deposit of \$1250.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on November 4, 2014.
5. Respondent sent a written statement to petitioner's forwarding address, by certified mail, in conformance with ordinance requirements. Said statement itemized deductions totaling \$2,648.84. Interest in the amount of \$36.00 was credited to the deposit.

6. Both parties testified concerning unpaid rent which appeared as a \$154.84 deduction on the itemized statement. Respondent deducted 4 days of rent for November. Petitioner objected to the deduction on the grounds that she was not told she would be charged for rent when she asked to stay an additional 4 days.

7. Both parties testified as to several deductions made for cleaning: \$165.00 for cleaning the kitchen and \$100.00 for cleaning baseboard trim, window sills and radiators. Respondent hired Laura's Cleaning Service to thoroughly clean the kitchen, including moving the appliances to clean behind and under them. The service spent 5.5 hours cleaning at a rate of \$30/hour. In addition, respondent's contractor cleaned all the base board and molding in the apartment at an actual cost of \$93.69.

8. Both parties testified concerning the oven which appeared as a \$300.00 deduction on the itemized statement. At the end of the tenancy 2 elements on the stove were not working; petitioner was aware that 1 element was not working at the end of the tenancy and she reported the problem to respondent. In addition, the drip pans were corroded, as were areas of the stove top. After pricing out the cost of replacement parts, respondent decided it was more economical to buy a new range; the cost of the new range was \$549.00.

9. Both parties testified as to deductions made for damage to 2 doors: a hollow core door costing \$175.00, a 6 panel wooden door costing \$350.00, and a door knob costing \$30.00. Both doors were damaged during petitioner's tenancy: one door had a hole in it (undisputed by petitioner) and the other was separated at the bottom, as well as being splintered around the doorknob. Based on photos submitted by respondent, the 6 panel door appears to be an older door.

10. Both parties testified as to deductions made for carpets, including: \$350.00 for carpet cleaning and \$400.00 for damage to the carpet in 2 rooms. The carpet was approximately 5 years old at the end of the tenancy. There were carpet pulls in 2 rooms which respondent attributed to petitioner's cat.

11. Both parties testified as to the following additional deductions: \$50 for repainting the entry doors; \$50 for patching, priming and painting a hole in the living room wall; and \$50 for patching,

priming and painting a hole in a bedroom wall. Petitioner did not dispute the damage but claimed the deductions were in excess of reasonable costs.

12. Both parties testified concerning repair to the vinyl at the bottom of the stairs, which appeared as a \$75.00 deduction on the itemized statement. Petitioner disputed the deduction because only 1 square in the vinyl had damage to it. However, the vinyl is sold in sheets, meaning it is impossible to replace just 1 square in the sheet.

13. Both parties testified as to deductions made to remove candle wax from 2 walls which, totaling \$75.00 on the itemized statement. The wax needed to be scraped off the wall and then the wall needed to be patched, primed and painted.

14. Both parties testified as to deductions made for 2 wall sconces, totaling \$60.00 on the itemized statement. Both sconces were replaced due to damage to them. Petitioner disputed the cost and argued the damage was normal wear and tear.

15. Both parties testified concerning a bi-fold closet door, which appeared as a \$50.00 deduction on the itemized statement. There was a hole in the door, costing \$62.06 to repair. Petitioner did not remember any damage to the door.

16. Both parties testified concerning paint on a wall in one of the bedrooms, which appeared as a \$20.00 deduction on the itemized statement. Petitioner disputed the cost to repaint. The cost to repaint was \$50 as evidenced by respondent's contractor.

17. Both parties testified concerning the mini-blinds, which appeared as a \$54.00 deduction on the itemized statement. Respondent replaced all the mini-blinds because they were filthy and it would have cost more to try to clean them.

18. Both parties testified concerning plumbing charges, which appeared as a \$140.00 deduction on the itemized statement. In March 2013, petitioner had a clogged toilet; respondent had his plumber auger the toilet. Petitioner disputed the deduction on the basis that respondent never told her she would be charged for the plumber and the charge arose in 2013, well more than a year before she moved out.

CONCLUSIONS OF LAW

19. 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.

20. 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.

21. 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 certified 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). Timely notice was provided.

22. Based on the evidence, the Board concludes the deductions for the oven, the baseboard, the carpet cleaning, and the wall sconces were not reasonable as the damage was part of normal wear and tear. With respect to the oven, in particular, although the damage appeared to be great, the oven was at the end of its life cycle and required replacement regardless of any damages attributable to petitioner. Moreover, it was unreasonable for respondent to deduct costs for the plumber services in March 2013—respondent should have billed petitioner for the service call in 2013 if it was his intent to hold petitioner responsible for the call.

23. The other damages attributable to petitioner went beyond normal wear and tear, thereby entitling respondent to retain a reasonable amount of petitioner's security deposit. Additionally, it was permissible for respondent to retain prorated rent for November 2014—although petitioner claims she did not know she would be charged for this rent, there is no enforceable agreement absolving her of this liability. Accordingly, based on the evidence, the Board concludes respondent was warranted in deducting the following reasonable amounts from petitioner's security deposit:

• Rent for November 2014	\$ 154.84
• Kitchen cleaning	\$ 85.00
• Damage to 2 doors & 1 knob	\$ 375.00
• Damage to carpet	\$ 200.00
• Repainting, patching, priming	\$ 150.00
• Damage to vinyl	\$ 75.00
• Removal of wax	\$ 75.00
• Bi-fold door	\$ 50.00
• Paint on wall	\$ 20.00
• Replace mini-blinds	\$ 54.00
Total	\$1238.84

ORDER


Accordingly, it is hereby ORDERED:

24. Petitioner Olga Sideleva is entitled to recover from respondent First Vermont Properties LLC the following amounts:


- a) \$48.16 of the principal amount of the security deposit improperly withheld after November 18, 2014; and
- b) Additional interest of \$0.0003 per day from November 19, 2014 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 9th day of February, 2014⁵.

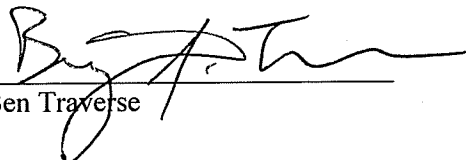
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Kirstin Daigle

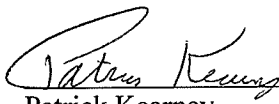


Jason L'Ecuyer



Ben Traverse

Loyal Ploof



Patrick Kearney