



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

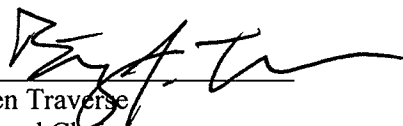
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 6/7/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Paul Soychak
King St Neighborhood Revitalization Corp, c/o BHA

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

**In re: Request for Hearing of PAUL SOYCHAK)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by KING ST NEIGHBORHOOD) HOUSING BOARD OF REVIEW
REVITALIZATION CORP. for Rental)
Unit at 174 Maple Street, #8)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on May 16, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L’Ecuyer and Patrick Kearney were also present. Petitioner Paul Soychak was present and testified. Respondent King Street Neighborhood Revitalization Corp. was represented at the hearing by Janet Dion from Burlington Housing Authority.

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 King Street Neighborhood Revitalization Corp. is the owner of a rental unit, 174 Maple Street, #8, in the City of Burlington which is the subject of these proceedings. Janet Dion manages the property.
2. Petitioner Paul Soychak moved into the rental unit in 2002 and paid a security deposit of \$239.00 to respondent. Petitioner was to receive back his security deposit at the end of his tenancy minus any amounts withheld for damages.
4. Petitioner vacated the apartment on February 29, 2016.
5. On March 8, 2016, Janet Dion sent a written statement, by certified mail, to petitioner’s last known address (the address of the rental unit) in conformance with ordinance requirements. Said statement itemized deductions totaling \$1,184.00. Interest in the amount of \$21.34 was credited to the deposit.

6. Both parties testified concerning broken crisper trays in the refrigerator which appeared as a \$96.00 deduction on the itemized statement. The parties agreed that the refrigerator was replaced in December 2015, meaning it was 2 months old at the end of the tenancy. Petitioner did not remember the condition of the trays when he moved out of the apartment. The Board finds that the trays were broken and needed to be replaced.

7. Both parties testified concerning deductions made for cleaning the stove, applying bin to the walls, repairing kitchen cabinets and repairing the entry door. Janet Dion submitted photographs of the apartment at the time of Petitioner's move out and testified that the apartment was rehabbed as recently as 2010. The photographs depicted each item subject to the security deposit deduction, with the exception of the entry door. Petitioner disputed that the apartment was rehabbed in 2010 and maintained that he did not cause any damage beyond normal wear and tear over the course of a 14-year tenancy. Ms. Dion provided no documentary evidence supporting the contention that the apartment was rehabbed. Moreover, to the extent it was rehabbed, there was no documentary evidence indicating that the rehab extended to the items allegedly damaged by Petitioner.

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 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.

11. Based on the evidence, the Board is unable to conclude that the apartment was actually rehabbed in 2010. Additionally, even if the apartment was rehabbed, there is insufficient evidence for the Board to conclude that the rehab extended to those items allegedly damaged by petitioner. Therefore, the Board must review the alleged damages in the context of a 14-year tenancy. Accordingly, the Board concludes that the deductions for cleaning the stove, applying bin to the walls, and replacing the kitchen cabinets were not reasonable. While acknowledging that these items certainly appeared damaged in the photographic evidence, the Board attributes this damage to normal wear and tear over a 14-year period. In addition, the Board concludes that the deductions for the entry door were not proper, as there was no convincing evidence that any damage to the door was caused by petitioner.

12. Based on the evidence, the Board concludes the deduction for the crisper trays was proper. There was no dispute that the refrigerator was new in December 2015. Consequently, the broken trays are damage beyond normal wear and tear.

ORDER

Accordingly, it is hereby ORDERED:

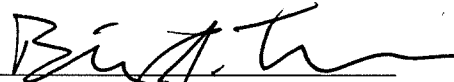
13. Petitioner Paul Soychak is entitled to recover from respondent King Street Neighborhood Revitalization Corp. the following amounts:

a) \$164.34 of the principal amount of the security deposit improperly withheld after March 14, 2016; and

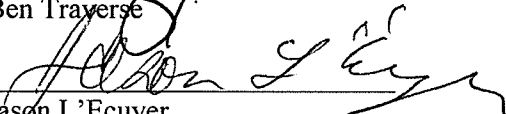
b) Additional interest of \$0.001 per day from March 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Trayerse

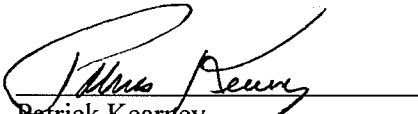


Jason L'Ecuyer



Kirstin Daigle

I respectfully dissent from the majority's decision.



Patrick Kearney