



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**

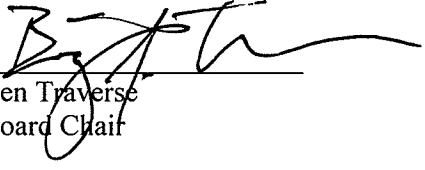
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 7/18/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse  
Board Chair

cc: Jasmine Walker  
Maria & Fritz Senftleber

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

**In re: Request for Hearing of JASMINE            )**  
**WALKER Regarding Withholding of        ) CITY OF BURLINGTON**  
**Security Deposit by MARIA and FRITZ    ) HOUSING BOARD OF REVIEW**  
**SENFTLEBER for Rental Unit at 132        )**  
**Hayward Street                                )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on June 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Jasmine Walker was present and testified. Respondents Maria and Fritz Senftleber were also present and testified. Also appearing and testifying was Hollis Easter.

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. Respondents Maria and Fritz Senftleber are the owners of a rental unit, 132 Hayward Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Jasmine Walker moved into the rental unit on November or about November 1, 2007. Hollis Easter moved into the unit in August, 2015. Petitioner and Hollis Easter then signed a lease agreement with respondents for the period April 1, 2016 to March 31, 2017. Monthly rent was \$2,100.00.
3. Petitioner paid a security deposit of \$1750.00 to respondents. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and Hollis Easter vacated the apartment on March 30, 2017.
5. On April 15, 2017, respondents returned \$1,088.70 of the deposit to petitioner with a post-it note itemizing deductions from the deposit. The note does not inform petitioner of her right to request a hearing to dispute the withholding of part of the deposit. In addition, interest was not credited to the deposit.

6. Petitioner argued that the withholding of part of the deposit was willful; she requested that respondents be ordered to return double the amount wrongfully withheld. The basis of petitioner's request was her belief that the deductions were inflated and did not reflect the actual cost to repair the alleged damages. Petitioner did not provide any written estimates or witnesses to support her argument that respondents' estimates were inflated. Petitioner also testified that respondents had a history of failing to comply with Minimum Housing standards, which she believed was evidence of willfulness.

### **CONCLUSIONS OF LAW**

7. 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.

8. 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.

9. 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).

10. 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 certified mail.<sup>1</sup> 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 forfeits the security deposit. In this case, respondents failed to comply with the notice requirements by failing to return the deposit with an itemized statement within 14 days of the vacate date and by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

11. Both city ordinance and state law provide that if the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioner argued that respondents' failure to return the deposit was willful; the basis for her claim was her belief that the deductions were inflated and not supported by facts. In addition, petitioner argued that respondents have a history of not complying with Burlington's rental registration program, thus evidencing their ill will. Petitioner's arguments are rooted in her belief that respondents were not being truthful about the cost of repairs; however, she provided no written estimates to support that belief. Although the Board does not need to reach a decision on the reasonableness of the deductions, on their face, they do not seem exorbitant. The Board concludes the deposit was not willfully withheld.

12. 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.

---

<sup>1</sup> An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

**ORDER**


Accordingly, it is hereby ORDERED:

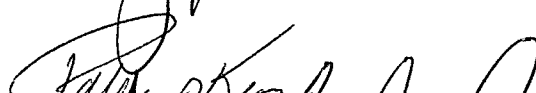
13. Petitioner Jasmine Walker is entitled to recover from respondents Maria and Fritz Senftleber the following amounts:

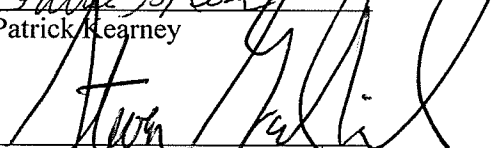
- a) \$661.30 of the principal amount of the deposit improperly withheld after April 14, 2017;
- b) Interest in the amount of \$41.31 on the entire deposit for the period November 1, 2007 to April 14, 2017; and
- c) Additional interest of \$0.004 per day from April 15, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 18<sup>th</sup> of July, 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse

  
\_\_\_\_\_  
Patrick Kearney

  
\_\_\_\_\_  
Steven Goodkind

  
\_\_\_\_\_  
Alec Bauer

  
\_\_\_\_\_  
Josh O'Hara