



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**

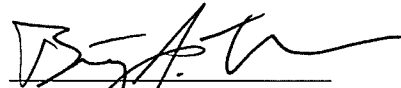
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 3/8/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
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Ben Traverse  
Board Chair

cc: Bradley Wallen  
Patricia Jane & Richard Couture for 364 QCP Road LLC

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

**In re: Request for Hearing of BRADLEY            )  
WALLEN Regarding Withholding of        ) CITY OF BURLINGTON  
Security Deposit by 364 QCP ROAD LLC) HOUSING BOARD OF REVIEW  
For Rental Unit at 364 Queen City        )  
Park Road    )**

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

The above-named hearing came before the Housing Board of Review on February 6, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O’Hara were also present. Petitioner Bradley Wallen was present and testified. Respondent 364 QCP Road LLC was represented at the hearing by Richard Couture.

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 364 QCP Road LLC is the owner of a rental unit, 364 Queen City Park Road, in the City of Burlington which is the subject of these proceedings. Richard Couture has been helping to manage the property since July 2016.

2. Petitioner moved into the rental unit on August 28, 1992. Petitioner paid a security deposit of \$555.00. In September 2005, the deposit increased to \$775.00. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

3. Petitioner vacated the apartment on January 6, 2017.

4. On January 6, 2017, Richard Couture returned \$625.00 of the deposit to petitioner along with a statement itemizing deductions taken from the deposit. The written statement did not inform petitioner of his right to appeal the withholding of the deposit to this Board.

5. Interest in the amount of \$180.00 was credited to the deposit. Richard Couture calculated the amount of interest using an interest rate of 1%, compounded annually, even though the current interest

rate is lower than that. Petitioner did not believe the interest was calculated correctly based on the amount of interest returned to him in 1992 by a previous landlord; that landlord calculated the interest due using a rate of 5% for the period 1989 to 1992.

### **CONCLUSIONS OF LAW**

6. 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.

7. 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.

8. 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). Timely notice was provided.

9. 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, respondent failed to comply with the notice requirements 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.

10. City ordinance requires that a security deposit be held by a landlord in an interest-bearing account, with an interest rate at least equivalent to a current Vermont bank passbook savings rate. Minimum Housing Code Sec. 18-120(a)(1). Petitioner disputed the amount of interest returned to him by respondent, but did not provide evidence of the interest rates over the period of his tenancy. As the Board typically calculates interest using the current Vermont bank passbook savings rate (which is less than 1%), the Board concludes that respondent's calculation of interest was reasonable. If respondent's calculated interest of \$180.00 was credited to petitioner's \$775.00 deposit, he would have been entitled to a return of his deposit equaling \$955.00. The difference between that amount and the \$625.00 previously returned to petitioner is \$330.00.

#### **ORDER**

Accordingly, it is hereby ORDERED:

11. Petitioner Bradley Wallen is entitled to recover from respondent 364 QCP Road LLC the following amounts:


- a) \$330.00 of the principal amount of the deposit withheld after January 20, 2017; and
- b) Additional interest of \$0.002 per day from January 21, 2017 until such date as the amount improperly withheld is returned to petitioner.

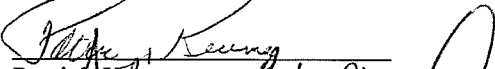
Dated at Burlington, Vermont this 8<sup>th</sup> of March, 2017.

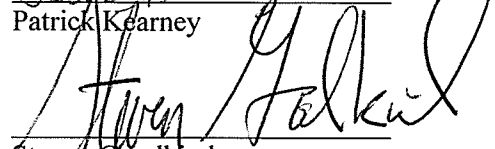
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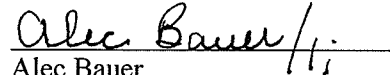
<sup>1</sup> An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.


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