



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

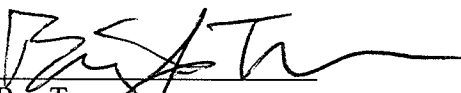
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 12/8/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Xiaoyu Wang
Danna Chen

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

**In re: Request for Hearing of XIAOYU WANG)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by DANNA CHEN for) HOUSING BOARD OF REVIEW
Rental Unit at 32 East Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 16, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Xiaoyu Wang was present and testified. Respondent Danna Chen was also present and testified. Also appearing and testifying as witnesses were Yanmei Jiang (petitioner's wife) and Wen Dong (respondent's son who also served as her interpreter).

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 Danna Chen is the owner of a rental unit, 32 East Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Xiaoyu Wang and his wife moved into the rental unit with a lease which ran from August 1, 2014 to July 31, 2015.
3. Petitioner paid a security deposit of \$725.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on August 1, 2015.
5. On September 4, 2015, respondent sent an email to petitioner itemizing deductions from his deposit. Respondent's email indicated the utility bills were still being finalized so that she would only return \$365.00 until the bills were finalized. Respondent verbally told petitioner on July 2, August 1 and August 3 that she was waiting to get all the final utility bills and would return the deposit after deducting the final utility expenses. Respondent believed petitioner had agreed to this arrangement until she

received an email from him on September 3. Respondent did not return any deposit monies because each time she emailed him with her calculation of the amount of the deposit to be returned (with deductions itemized) he responded that he did not agree to the calculation; respondent believed she and petitioner needed to be in agreement before returning any money to him. Petitioner argued that respondent's failure to return the deposit was willful and requested that the Board order respondent to pay double the amount withheld.

6. None of respondent's email's included notice to petitioner of his right to request a hearing before this Board to dispute the withholding of his deposit. In addition, interest was not credited to the deposit.

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 mailed. 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).

If the failure 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).

10. A landlord who decides to retain all or part of a security deposit must comply with the 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 mailed to the tenant's forwarding address. 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 send a written statement of deductions within 14 days of the date petitioner moved out and by failing to inform petitioner of his appeal rights. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. City ordinance and state law provide that if the failure to return the 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 respondent's failure to send a written statement within 14 days was willful because he did not receive a written statement until September 4 after he sent an email to respondent's son. Respondent, unaware of the obligation to provide a written statement, verbally told petitioner on July 2, August 1 and August 3 that she was withholding the deposit until all the utility bills were received. When she offered to return part of the deposit while she was waiting for the bills, petitioner told her the amount was not acceptable so she believed she needed to wait until they were in agreement over the bills. While respondent's assessment of the situation was incorrect, the Board concludes her failure to return the deposit with a written statement within 14 days was not willful.

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.

ORDER

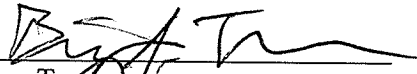
Accordingly, it is hereby ORDERED:

13. Petitioner Xiaoyu Wang is entitled to recover from respondent Danna Chen the following amounts:


- a) \$726.88, the principal amount of the security deposit plus interest; and
- b) Additional interest of \$0.005 per day from August 15, 2015 until such date as the amount improperly withheld is returned to petitioner.


DATED at Burlington, Vermont this 8th day of December, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverser


Jason L'Ecuyer


Kirstin Daigle


Patrick Kearney