



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 8/4/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Sam Watson
TYA LLC, c/o Laura Marcou

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

**In re: Request for Hearing of SAM WATSON)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by TYA LLC for Rental Unit at) HOUSING BOARD OF REVIEW
295 Maple St., Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on July 6, 2015. Board Chair Kirstin Daigle presided. Board Members Loyal Ploof, Jason L'Ecuyer, Patrick Kearney and Ben Traverse were also present. Petitioner Sam Watson was present and testified. Respondent TYA LLC was represented at the hearing by Laura Marcou, the property manager.

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 TYA LLC is the owner of a rental unit, 295 Maple Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Laura Marcou is the property manager.
2. Petitioner Sam Watson (and his 2 roommates) moved into the rental unit with a lease which ran from June 1, 2014 to May 31, 2015. Monthly rent was \$1800.00.
3. Petitioner paid a security deposit of \$600.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and his roommates vacated the apartment on June 1, 2015.
5. On June 12, 2015, respondent sent a written statement to petitioner in conformance with ordinance requirements. Said statement itemized deductions totaling \$79.67 from each tenant. The amount of the security deposit returned to petitioner was \$529.33.
6. Interest in the amount of \$9.00 was credited to the deposit.
7. Both parties testified concerning a cleaning charge which appeared as a \$79.67 deduction on the written statement. The total charge for cleaning done at the unit was \$200.00; Laura Marcou split the

charge between petitioner and his 2 roommates. Because respondent had so many units turning over at the same time, they hired a cleaning service for all the apartments. The statement from the cleaning service indicates they spent 8 hours cleaning petitioner's apartment: the floors were scrubbed due to the excessive amount of dirt on them, the walls and baseboards were cleaned, the bathroom was cleaned and the appliances were pulled out so that the floors and walls around them could be cleaned.¹ Petitioner did some cleaning before moving out, but there was cleaning beyond what was attributable to normal wear and tear that needed to be done.

8. Both parties also testified concerning a fee for running a credit report, which appeared as a \$13.00 deduction on the written statement. Prior to leasing the rental unit, petitioner was asked to complete a rental application. The application process included a credit check and the application form itself indicated that petitioner was required to pay a \$13.00 credit check fee. More specifically, the application states: "[t]here is a \$13.00 credit check fee. You must submit this fee with your application or it will not be processed." Laura Marcou testified that petitioner was supposed to pay the fee, but he did not. Petitioner thought he paid the fee, but he was unsure. Laura Marcou did not provide documentary evidence that the credit check was done. Of course, there was no dispute that petitioner's rental application was processed and that he was subsequently permitted to lease the rental unit.

CONCLUSIONS OF LAW

9. 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.

10. 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.

¹ Respondent submitted a number of photos into evidence that showed areas of the rental unit in complete disarray. Respondent admitted, however, that the photos were taken after a social gathering held some months before the tenants moved out. Accordingly, the photos are irrelevant to the Board's determination.

11. 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). Timely notice was provided.

12. Based on the evidence, the Board concludes it was reasonable to withhold \$79.67 from petitioner's deposit to cover the cost of cleaning beyond normal wear and tear. The Board credits respondent's testimony regarding the state of the rental unit at the time the tenants moved out. The unit required significant professional cleaning beyond that which could be characterized as normal wear and tear. Whereas petitioner generally refuted respondent's statements, his testimony was not supported by sufficient evidence.

13. The Board concludes, however, that the credit report fee was not proper. State law prohibits charging an application fee to any individual in order to apply to enter into a rental agreement. 9 V.S.A. Sec. 4456a. Moreover, even if the credit report fee was not an "application fee," per se, city ordinance and state law allow the withholding of all or a portion of the security deposit only for: nonpayment of rent, damage beyond normal wear and tear, expenses required to remove abandoned items from the apartment and expenses required to be paid directly to a landlord or a utility. Minimum Housing Code Sec. 18-120(a) and 9 V.S.A. Sec. 4461(b). The function of a security deposit is to ensure that a tenant pays rent and maintains the dwelling unit. 9 V.S.A. Sec. 4461(a). Any rental application process is separate and apart from the landlord-tenant relationship established by a subsequent lease agreement. To

the extent respondent wishes to collect the \$13.00 credit check fee, her remedy lies before a court and may not be otherwise satisfied through petitioner's security deposit.

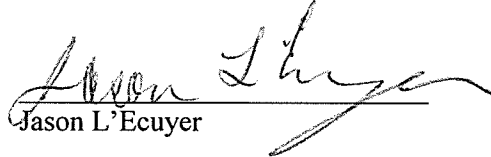
ORDER

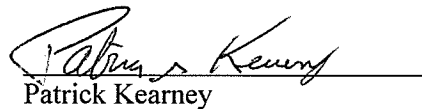
Accordingly, it is hereby ORDERED:

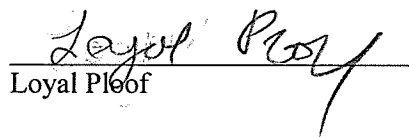
14. Petitioner Sam Watson is entitled to recover from respondent TYA LLC \$13.00, that portion of the security deposit improperly withheld for a credit check fee.

DATED at Burlington, Vermont this 4th day of August, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

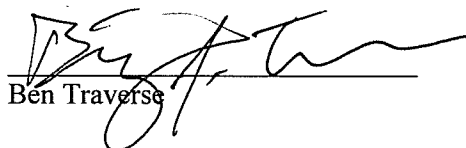

Jason L'Ecuyer


Patrick Kearney


Loyal Pléof

We concur with the majority with respect to the credit check fee, but respectfully dissent to the extent that we would have concluded the deduction for cleaning was improper.


Kirstin Daigle


Ben Traverse