



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

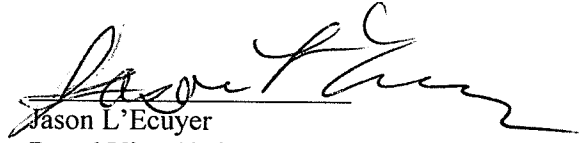
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/7/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuyer
Board Vice Chair

cc: Conrad Wells
Jacqueline Rose and Jim Burns

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

**In re: Request for Hearing of CONRAD)
WELLS Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JIM BURNS and) HOUSING BOARD OF REVIEW
JACQUELINE ROSE for Rental Unit at)
61 Hyde Street, Apt. B)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 1, 2015. Acting Board Chair Jason L'Ecuyer presided. Board Members Loyal Ploof, Patrick Kearney and Ben Traverse were also present. Petitioner Conrad Wells was present and testified. Respondents Jim Burns and Jacqueline Rose were also present.

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 Jacqueline Rose and Jim Burns are the owners of a rental unit, 61 Hyde Street, Apt. B, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Conrad Wells moved into the rental unit with a lease which ran from June 1, 2014 to May 31, 2015. Petitioner's roommate, Sayer Dwyneil-Yardley, was already living in the apartment when petitioner moved into it; Mr. Dwyneil-Yardley and petitioner executed a new lease with respondents on May 18, 2014. Monthly rent was \$1575.00.
3. Petitioner and Sayer Dwyneil-Yardley paid a security deposit of \$1575.00 to respondents. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties provided conflicting testimony as to the move out date. Petitioner testified all his belongings were out of the apartment by May 31, 2015. Respondents testified they were not sure petitioner was finished moving out of the apartment until June 2, 2015. There was no dispute that Sayer

Dwynell-Yardley moved out approximately 1 week before the lease expired. A series of text messages between May 31 and June 2 between petitioner and respondents indicate respondents should have known on June 1, 2015 that petitioner was out of the apartment and not returning. The Board specifically finds that petitioner vacated the apartment by June 1, 2015.

5. On June 16, 2015, respondents sent a written statement, by certified mail, to Sayer Dwyne-Yardley's forwarding address informing him and petitioner that \$856.00 of the deposit was being withheld for damages. The statement did not include written notice of the tenants' opportunity to request a hearing before this Board to dispute the withholding of the deposit.

6. Respondents returned \$719.00 of the deposit to petitioner and Sayer Dwyne-Yardley. 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 within 14 days. 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. Based on the evidence, the Board concludes that respondents failed to return the deposit with a statement within 14 days, and forfeited the right to withhold any portion of the security deposit.

11. 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

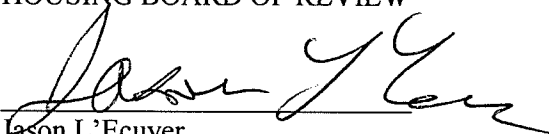
Accordingly, it is hereby ORDERED:

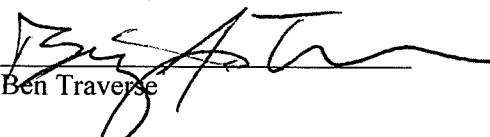
12. Petitioner Conrad Wells is entitled to recover from respondents Jacqueline Rose and Jim Burns the following amounts:

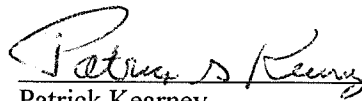
- a) \$856.00 of the principal amount of the security deposit improperly withheld after June 15, 2015;
- b) Interest in the amount of \$4.09 on the entire deposit for the period June 1, 2014 to June 15, 2015; and
- c) Additional interest of \$0.006 per day from June 16, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 7th day of October, 2015.


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuyer


Ben Traverse


Patrick Kearney

I respectfully dissent from the decision of the majority.


Loyal Ploof