



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 12/5/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
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Ben Traverse  
Board Chair

cc: Thomas Wheeler  
Farrell Vermont LLC

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

**In re: Request for Hearing of THOMAS                    )**  
**WHEELER Regarding Withholding of                ) CITY OF BURLINGTON**  
**Security Deposit by FARRELL                         ) HOUSING BOARD OF REVIEW**  
**VERMONT LLC for Rental Unit at 206                )**  
**So. Winooski Avenue, Apt. 5                         )**

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

The above-named hearing came before the Housing Board of Review on November 6, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Josh O’Hara, Alec Bauer and Steven Goodkind were also present. Petitioner Thomas Wheeler was present and testified. Respondent Farrell Vermont LLC was represented at the hearing by Ron Farrell who testified.

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 Farrell Vermont LLC is the owner of a rental unit, 206 So. Winooski Avenue, Apt. 5, in the City of Burlington which is the subject of these proceedings. Ron Farrell manages the property.
2. Petitioner Thomas Wheeler moved into the rental unit with a lease which ran from mid-April, 2016, to August 28, 2017.
3. Petitioner paid a security deposit of \$695.00 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 22, 2017.
5. On September 5, 2017, respondent sent a written statement to petitioner informing him that \$372.36 of the deposit was being withheld for carpet replacement. Respondent returned \$322.64 of the deposit to petitioner. The written statement did not include notice to petitioner of his right to dispute the withholding of the deposit (or part of it) to this Board.

6. 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 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

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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.

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.

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 Thomas Wheeler is entitled to recover from respondent Farrell Vermont LLC the following amounts:

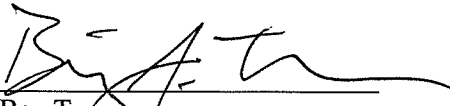
a) \$372.36 of the principal amount of the security deposit improperly withheld after September 5, 2017;

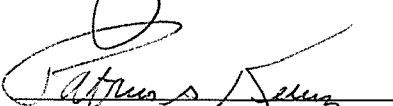
b) Interest in the amount of \$2.46 on the entire deposit for the period April 15, 2016 to September 5, 2017; and

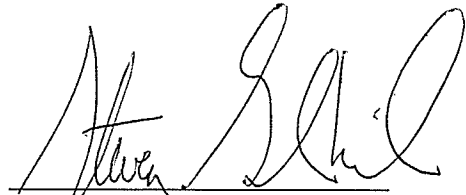
c) Additional interest of \$0.002 per day from September 6, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 5<sup>th</sup> of December, 2017.

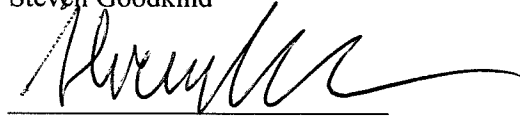
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