



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 12/18/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

Josh O'Hara  
Board Vice Chair

cc: Eric Youngren  
Francois Nsibienakou

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

**In re: Request for Hearing of ERIC )  
YOUNGREN Regarding Withholding of ) CITY OF BURLINGTON  
Security Deposit by FRANCOIS ) HOUSING BOARD OF REVIEW  
NSIBIENAKOU for Rental Unit at 234 )  
Curtis Avenue )**

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

The above-named hearing came before the Housing Board of Review on November 20, 2017. Board Vice Chair Josh O’Hara presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Eric Youngren was present and testified. Respondent Francois Nsibienakou was also present and 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 Francois Nsibienakou is the owner of a rental unit, 234 Curtis Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Eric Youngren moved into the rental unit on or about January 1, 2008. Petitioner paid a security deposit of \$950.00 to respondent. Petitioner was to receive back his security deposit at the end of the tenancy minus any amounts withheld for damages.
3. The parties disputed the date on which the apartment was vacated. Petitioner testified that he moved out on August 31, 2017. Respondent testified that petitioner was still cleaning the unit on August 31 when it was checked; the following Monday (September 4), respondent became aware that the unit was vacant.
4. On September 15, 2017, petitioner received a statement from respondent itemizing deductions from the deposit. Said statement itemized deductions totaling \$442.00. Respondent returned \$508.00 of

the deposit to petitioner. Petitioner disputed the timeliness of the statement, as well as respondent's failure to credit interest to the deposit and his failure to conduct a final inspection of the unit.

5. Respondent's statement informed petitioner that he had 30 days to contest any charges and the amount returned to him. However, respondent did not inform petitioner how to do that: he did not inform petitioner that he could dispute the withholding of the deposit to this Board.

### **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 landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date, 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).

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. Petitioner disputed the timeliness of respondent's statement claiming he vacated the unit on August 31. However, petitioner was still cleaning the unit when it was checked on August 31; respondent became aware that the unit was vacant the following Monday (September 4) when the unit was checked. Petitioner received the statement of withholding on September 15; consequently, the Board concludes notice was timely. However, respondent failed to comply with the notice requirements by failing to fully include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

10. 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:

11. Petitioner Eric Youngren is entitled to recover from respondent Francois Nsibienakou the following amounts:

a) \$442.00 of the principal amount of the security deposit improperly withheld after September 18, 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.


b) Interest in the amount of \$22.89 on the entire deposit for the period January 1, 2008 through September 18, 2017; and

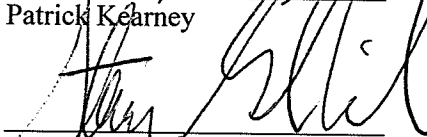
c) Additional interest of \$0.003 per day from September 19, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 18<sup>th</sup> of December 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Josh O'Hara

  
Patrick Kearney

  
Steven Goodkind