



HOUSING BOARD OF REVIEW

**City of Burlington**

149 Church Street Room 11  
Burlington, Vermont 05401  
(802) 865-7122

**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: July 11, 2024

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Chair

cc: Kelsey Rose via email  
Allan Hunt via email

**CITY OF BURLINGTON, VERMONT  
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of KELSEY ROSE )  
Regarding Withholding of Security ) Security Deposit Appeal  
Deposit by ALLAN HUNT for Rental )  
Unit at 36 Marble Avenue )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on June 10, 2024. Board Chair Betsy McGavisk presided via Zoom. Board Members Olivia Taylor and Lisa Gerlach were present via Zoom; Board Member Josh Wronski was present in person. Petitioner Kelsey Rose was present and testified via Zoom. Respondent Allan Hunt was also present and testified in person.

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 Allan Hunt is the owner of a rental unit, 36 Marble Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Kelsey Rose moved into the rental unit with a written lease which ran from August 1, 2023 to July 30, 2024. Monthly rent was \$1850.00.
3. Petitioner paid a security deposit of \$1850.00 to respondent. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 1, 2024.
5. On May 15, 2024, respondent sent petitioner a written statement in accordance with ordinance requirements. Said statement itemized deductions of \$2050.00 from the deposit: \$200

for cleaning and \$1850 for “break lease fee.” Interest in the amount of \$14.00 was credited to the deposit. None of the deposit was returned.

6. Petitioner only disputed the deduction of \$1850.00. Petitioner disputed the deduction because it was contrary to what she believed was an agreement between herself and respondent with respect to moving out before the end of the lease. On March 19, 2024, petitioner informed respondent that she wanted to break the lease; respondent replied and asked petitioner for a specific date. In his reply email, respondent wrote, “Willing to work with you when I have a specific date.” Petitioner stated that she would be out by May 1 so that she wouldn’t have to pay rent for the month (of May). Petitioner also offered to help find a new tenant.

7. On March 24, 2024, respondent emailed petitioner and told her he would like to be paid through the end of May; however, he told petitioner that if he found someone to move in earlier, he would refund the difference. On March 29, 2024, petitioner sent respondent an official notice informing him that she would be out of the apartment by May 1.

8. Respondent testified that he advertised the apartment for rent prior to April 1, 2024. Respondent showed the apartment several times before leaving town for the last 2 weeks of April. Respondent testified that there were several people interested in the apartment, but they wanted to see it empty. Respondent showed the apartment on May 1 when it was empty and he rented it for May 15. Respondent believed he rented the apartment very quickly, saying that it usually takes him a month to turnover an apartment and get it ready for a new tenant.

9. When respondent withheld the entire deposit of \$1850.00 he primarily relied on a lease provision: “If you cancel or break this lease, you will lose your deposit. There will be no exceptions.” However, respondent also believed he was owed for lost rent, carpet cleaning and

repairs to the smoke/CO detectors even though carpet cleaning was the only other deduction on the itemized statement.

10. Petitioner argued that the deposit was willfully withheld because respondent did not make a reasonable effort to re-rent the apartment. Additionally, petitioner testified that respondent told her she would get her security deposit back. Respondent denied that the deposit was willfully withheld and believed that the apartment was turned over very quickly.

### **Conclusions of Law**

11. 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.

12. 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.

13. 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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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).

Proper notice was provided to petitioner.

14. City ordinance is clear with respect to the reasons for withholding a deposit. A deposit may be withheld for unpaid rent, for unpaid utilities, for the cost to repair damages attributable to the tenant and for the cost to remove items abandoned by the tenant. Minimum Housing Code Sec. 18-120(a). Under respondent's lease, a tenant loses their deposit if they cancel or break the lease, no exceptions. It is not related to any actual costs, but acts as an automatic surrender of the deposit whether there are any actual damages. The Board concludes the break lease fee is not a deduction covered under the ordinance: it doesn't reflect any actual damage attributed to the tenant. Therefore, the fee cannot be withheld from the security deposit. The Board expresses no opinion about the availability of relief in other legal venues.

15. Petitioner argued that the deposit was willfully withheld and requested the Board order double damages to be paid. As stated previously, a landlord is required to return a deposit within 14 days of the move out date with a written statement itemizing any deductions from the deposit. Minimum Housing Code Sec. 18-120(c). If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondent's failure to return her security deposit was willful. However, respondent did not fail to send an itemized list of deductions from the deposit and to provide the required notices. Respondent sent an itemized list on May 15, 2024 as required under the ordinance. Petitioner disputed the allowable use of the deductions which does not amount to the willful failure to return the deposit. Deductions from a deposit are often

disputed between the parties and the ordinance provides a remedy to dispute those deductions – that is, filing a request for hearing before this Board. The willfulness clause of the ordinance does not mean making a determination on the willfulness of each individual deduction (regardless of whether the Board finds the deduction reasonable or proper) – such a reading of the ordinance does not make sense. It is the failure to return within 14 days that triggers a determination of willfulness, not the taking of deductions. Therefore, petitioner’s request for double damages is denied.

**Order**

Accordingly, it is hereby ORDERED:

16. Petitioner Kelsey Rose is entitled to recover from respondent Allan Hunt the following amounts:

- a) \$1664.00 of the amount of the security deposit improperly withheld after May 16, 2024; and
- b) Additional interest of \$0.01 per day from May 17, 2024 until such date as the amount improperly withheld is returned to petitioner.

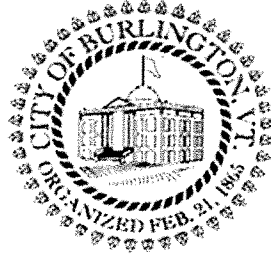
DATED at Burlington, Vermont this 11<sup>th</sup> day of July, 2024.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Olivia Taylor  
Olivia Taylor

/s/ Josh Wronski  
Josh Wronski



**HOUSING BOARD OF REVIEW**

**City of Burlington**

149 Church Street Room 11  
Burlington, Vermont 05401  
(802) 865-7122

**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: July 11, 2024

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Chair

cc: Sara Etienne via email & US mail  
Diamond Apartments via email & US mail

**CITY OF BURLINGTON, VERMONT  
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of SARA ETIENNE )  
Regarding Withholding of Security ) Security Deposit Appeal  
Deposit by DIAMOND APARTMENTS )  
for Rental Unit at 305 So. Union Street )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on June 10, 2024; the meeting was remote and in person. Board Chair Betsy McGavisk presided remotely via Zoom. Board Members Olivia Taylor and Lisa Gerlach appeared remotely; Board Member Josh Wronski was also present (in person). Petitioner Sara Etienne was present and testified remotely via Zoom. Respondent Diamond Apartments was represented by Elmira Shirova who was also present and testified remotely via Zoom.

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 Diamond Apartments is the owner of a rental unit, 305 South Union Street, in the City of Burlington which is the subject of these proceedings. Elmira Shirova manages the property.
2. Petitioner Sara Etienne moved into the rental unit with a written lease which ran from October 29, 2023 to January 7, 2024; petitioner's tenancy thereafter was month-to-month. Monthly rent was \$1095.00.
3. Petitioner paid a security deposit of \$500.00 to respondent. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. In November, 2023, petitioner and Elmira Shirova exchanged text messages about whether petitioner was extending her lease beyond January 7, 2024. Petitioner wrote to Ms. Shirova, “Yes, I’ve extended and will be staying till 4/30/2024.” Elmira Shirova acknowledged receiving the message and told petitioner, as an FYI, that the apartment would be available until May 25 if she wanted to stay longer. While petitioner acknowledged the message, “K,” she did not indicate she wanted to stay beyond April 30.

5. Petitioner vacated the apartment on April 29, 2024 at which time she informed respondent she was out of the apartment.

6. On May 8, 2024, respondent sent petitioner written notice that the entire deposit was being withheld for rent for the month of May. Respondent’s notice indicated petitioner did not provide advance notice that she was moving out; respondent believed petitioner was staying until May 25. Based on their text messages in November, Elmira Shirova testified that she believed petitioner had decided to stay in the apartment until May 25 and was surprised to receive her message on April 29 that she was out of the apartment. Petitioner testified she never indicated she was staying until May 25, Elmira Shirova just assumed that was what was happening.

7. Petitioner argued that the deposit was willfully withheld and requested that the Board award her double damages. Petitioner argued that Elmira Shirova made an incorrect assumption despite the fact that she told Ms. Shirova well in advance that she was moving out on April 30, 2024. Elmira Shirova denied that the withholding was willful. She believed petitioner was moving out on May 25 and was surprised when she received petitioner’s text on April 29 that she was out of the apartment.

8. On June 10, 2024, respondent returned the entire deposit plus interest to petitioner. Elmira Shirova testified that after reviewing the documents submitted by petitioner for this

hearing, she discovered she had made an “honest mistake” by withholding the deposit. Ms. Shirova believed petitioner’s move-out date was May 25, but realized petitioner had informed her the date was April 30.

### **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.

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 sent by mail to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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). Proper notice was provided to petitioner.

12. The entire deposit plus interest has been returned to petitioner. Therefore, the only issue before the Board is whether the deposit was willfully withheld. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has alleged that respondent's failure to return her security deposit was willful. However, respondent did not fail to return the deposit with a written statement. Respondent sent an itemized list of deductions from the deposit on May 8, 2024 as required under the ordinance. Petitioner disputed the allowable use of the deductions which does not amount to the willful failure to return the deposit. Deductions from a deposit are often disputed between the parties and the ordinance provides a remedy to dispute those deductions – that is, filing a request for hearing before this Board. The willfulness clause of the ordinance does not mean making a determination on the willfulness of each individual deduction (regardless of whether the Board finds the deduction reasonable or proper) – such a reading of the ordinance does not make sense. It is the failure to return within 14 days that triggers a determination of willfulness, not the taking of deductions. Therefore, petitioner's request for double damages is denied.

### **Order**

Accordingly, it is hereby ORDERED:

13. Petitioner Sara Etienne's request for relief is DENIED.

DATED at Burlington, Vermont this 11<sup>th</sup> day of July, 2024.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Olivia Taylor  
Olivia Taylor

/s/ Josh Wronski  
Josh Wronski



**HOUSING BOARD OF REVIEW**

**City of Burlington**

149 Church Street Room 11  
Burlington, Vermont 05401  
(802) 865-7122

**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: July 11, 2024

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk  
Board Chair

cc: Brooke Romania via email  
Kevin Barber via email

**CITY OF BURLINGTON, VERMONT  
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of BROOKE            )**  
**ROMANIA Regarding Withholding of        ) Security Deposit Appeal**  
**Security Deposit by KEVIN BARBER        )**  
**for Rental Unit at 57 George Street        )**

**DECISION AND ORDER**

The above-named hearing came before the Housing Board of Review on June 10, 2024. Board Chair Betsy McGavisk presided remotely via Zoom. Board Members Olivia Taylor and Lisa Gerlach also appeared remotely; Board Member Josh Wronski was present in person. Petitioner Brooke Romania was present and testified remotely. Respondent Kevin Barber was also present and testified in person. Also appearing remotely and testifying was Lynn Romania.

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 Kevin Barber is the owner of a rental unit, 57 George Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Brooke Romania moved into the rental unit with a written lease which ran from June 1, 2023 to May 28, 2024. Monthly rent was \$2400.00.
3. Petitioner paid a security deposit of \$2400.00 to respondent. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on April 26, 2024.
5. On May 3, 2024, respondent sent a statement to petitioner in accordance with ordinance requirements. Said statement itemized deductions of \$696.16 from the deposit: \$35 for a broken window, \$12.70 for a broken toilet seat and \$648.46 to replace flooring. Interest in the

amount of \$24.00 was credited to the deposit. Respondent returned \$1727.84 of the deposit to petitioner.

6. Petitioner disputed the deduction of \$648.46 to replace flooring: the deduction included the cost of the flooring and labor to install it. Respondent replaced the flooring in one of the rooms due to warped planks and areas where the flooring was curled up. Petitioner testified that when she moved into the apartment there were signs of floor boards warping. In addition, petitioner and Lynn Romania testified there was evidence of moisture coming from the roof, such as moisture on a wall. Petitioner believed the warped flooring was the result of unaddressed moisture issues in the apartment. A photo submitted by respondent labeled, 'Taken 5/23', shows part of the floor; the photo shows a few spots where the planks are curled up at the end, but otherwise the flooring appears unwarped.

7. In August, 2023, petitioner reported some mold in her bedroom closet to respondent. In September, respondent was finally able to get someone to check the slate roof and make necessary repairs. After the repairs to the roof were made, respondent fixed the closet (hung drywall, insulated the wall and painted it).

8. In early April 2024, petitioner reported that she and her roommates were experiencing symptoms of mold exposure. As a result, they requested a waiver of May's rent, the return of their security deposit in full, and alternative housing for one of them. In response, respondent sent ServPro to the property to address their complaint about moisture and mold. Respondent informed petitioner that ServPro found no moisture or signs of mold in the apartment, but made several recommendations to him such as running a dehumidifier in the basement, repairing a pressure relief valve on the furnace and not storing items in the basement. The only moisture found by ServPro was some wetness on a floor as though something had leaked on it. Petitioner

had a fountain on the floor for her cat and respondent believed that might have leaked onto the floor. Petitioner did not believe the fountain (which she described as a like a water bowl for her cat) could have damaged the flooring.

### **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.

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 sent by mail to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. Minimum Housing Code Sec. 18-120(c). Proper notice was provided.

12. The only deduction in dispute was the deduction of \$648.46 for new flooring. Respondent attributed the damage to petitioner and possibly the fountain she had on the floor for her cat. Petitioner denied that the damage could have come from the fountain which she

described as similar to a water bowl for a cat; petitioner believed the damage was a result of unaddressed moisture issues in the apartment. While there was evidence that the flooring was damaged and needed to be replaced, the Board concludes there is insufficient evidence to show that the damage was attributable to petitioner. Therefore, the deduction is not allowed.

**Order**

Accordingly, it is hereby ORDERED:

13. Petitioner Brooke Romania is entitled to recover from respondent Kevin Barber the following amounts:

a) \$648.46 of the principal amount of the deposit improperly withheld after May 10, 2024; and

b) Additional interest of \$0.004 per day from May 11, 2024 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 11<sup>th</sup> day of July, 2024.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk  
Betsy McGavisk

/s/ Olivia Taylor  
Olivia Taylor

/s/ Josh Wronski  
Josh Wronski

