



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

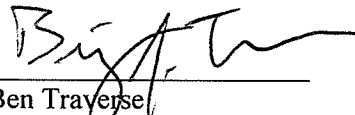
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 12/30/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Chris Khamnei
Bill Ward
Patricia Wehman

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 225-227 St. Paul Street) HOUSING BOARD OF REVIEW**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Petitioner Chris Khamnei is the owner of a rental property, 225-227 St. Paul Street, in the City of Burlington which is the subject of these proceedings. David McGee is the property manager.

2. On October 23, 2015, Code Enforcement Officer Kim Ianelli conducted a follow-up inspection at the premises to see if all the items cited in a previous order had been repaired. Ms. Ianelli found that there were still deficiencies at the property and issued a follow-up Order, and sent an invoice for reinspection fees, on October 26, 2015.

3. On November 6, 2015, respondent appealed the reinspection order and fees.

4. At issue in this case is the charge for reinspection fees. The Minimum Housing Code provides that reinspection fees shall be paid by the property owner for a reinspection that is required due to the existence of violations at the property. Minimum Housing Code Sec. 18-30(b). The first reinspection fee is \$60.00 per unit.

5. The property was originally inspected on September 18, 2015; at that time, there were violations found and an Order was issued. The violations were to be corrected by the time of the reinspection which was scheduled for 11:30 a.m. on October 23, 2015. When Kim Ianelli conducted the reinspection she found 3 violations which were still outstanding: the kitchen faucet in Unit 1 was still loose, the heater in the basement in Unit 2 lacked an inspection tag,¹ and Unit 3 (located on the third and uppermost floor) was occupied without having a second means of egress. Petitioner acknowledged that the violations still existed at the time of the reinspection. However, by the end of the day, petitioner provided documentation to the Code Enforcement Office that the heater tags were present and the loose faucet was repaired. Petitioner also submitted an Extension Request form related to Unit 3.

6. The basis of petitioner's appeal is that 2 of the violations were corrected and an extension to comply with the third violation was requested (albeit all after the reinspection occurred) so that the reinspection fees should not be charged. Patricia Wehman agreed to waive the fees once the building was fully in compliance with the Order, per department policy. Bill Ward explained that fees are not removed until the entire building is in compliance as a way to ensure that all the work occurs.

CONCLUSIONS OF LAW

7. Section 18-42(d) of the Minimum Housing Code grants the Housing Board of Review the power to reverse or affirm, in whole or in part, any order or other action of the inspector and to make such order, requirement, decision or determination as ought to be made.

8. At the time of a reinspection, if the Order has not been complied with and if a written extension has not been granted, a reinspection fee shall be billed to the owner. Minimum Housing Code Sec. 18-27. There is no dispute that the violations still existed at the time of the reinspection. Therefore, the Board concludes the reinspection fees are proper and due under the ordinance.²

¹ Kim Ianelli was unable to access the heater for Unit 2 at the reinspection in order to confirm whether or not there was an inspection tag on it.

² If the Code Enforcement Office agrees to a waiver of any, or all, of the fees according to their department policy, the Board does not oppose such action.

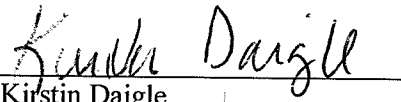
ORDER

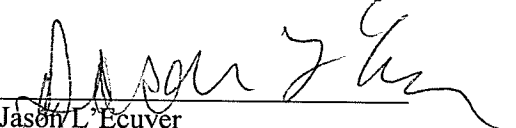
Accordingly, it is hereby ORDERED:

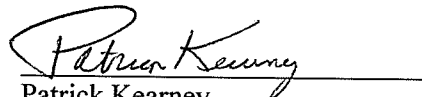
9. The assessment of \$180.00 in reinspection fees for the reinspection that occurred on October 23, 2015 is **AFFIRMED**.

DATED at Burlington, Vermont this 30th day of December, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

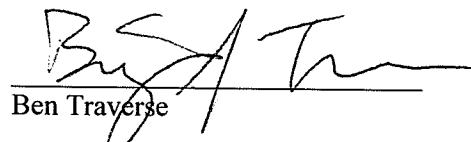

Kirstin Daigle


Jason L. Ecuier


Patrick Kearney

I concur with the order and add the following:

10. At hearing, the Code Enforcement Office requested that the Board declare Unit 3 uninhabitable on account of it not having a second means of egress. The Board is unable to grant this relief, as Section 18-42(b) of the Minimum Housing Code excepts the enforcement of "orders issued with respect to fire safety" from the Board's authority. However, the evidence presented clearly indicated that Unit 3, located on the third and uppermost floor of the building, is without a second means of egress and cannot be safely occupied. It is unacceptable to ignore fire safety to the end of maximizing rental profits. Whereas declaring the unit uninhabitable may present inconveniences for the current tenant, such issues are minor when compared to the dangers of continued habitation. Accordingly, I encourage the Code Enforcement Office to exercise the fullest extent of its authority in bringing this unit into compliance.


Ben Traverse



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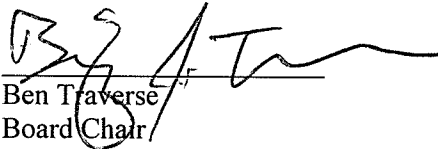
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DATED 12/30/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Rebecca & Lee Henderson
Alph Realty

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

**In re: Request for Hearing of REBECCA and)
LEE HENDERSON Regarding) CITY OF BURLINGTON
Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
ALPH REALTY for Rental Unit at 65B)
King Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 7, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Rebecca and Lee Henderson were present and testified. Respondent Alph Realty was represented by Brennan Kelley and Kristina Bissonette from Bissonette Properties. Also appearing and testifying as a witness was Diane Deso.

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 Alph Realty is the owner of a rental unit, 65B King Street, in the City of Burlington which is the subject of these proceedings. Brennan Kelley and Kristina Bissonette manage the property.
2. Petitioners Rebecca and Lee Henderson moved into the rental unit with a written lease which ran from March 21, 2012 to February 28, 2013. After the initial term of the lease, petitioners rented on a month-to-month basis.
3. Petitioners paid a security deposit of \$975.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties provided conflicting testimony as to the date petitioners moved out of the apartment and the date on which all the keys to the unit were returned to respondent. Respondent terminated the tenancy as of August 31, 2015; however, respondent agreed to extend the termination date

to give petitioners more time to move-out of the apartment. Rebecca Henderson moved out on September 15, but Lee Henderson remained in the apartment. Petitioners testified Lee Henderson moved out on September 24, 2015 at which time Rebecca Henderson returned both keys to Bissonette Properties' office. Kristina Bissonette testified that Rebecca Henderson returned one key to her, and on October 2, 2015, she witnessed Lee Henderson return the second key to the office. The Board credits respondent's testimony and specifically finds that petitioners moved out of the apartment on or by September 24, 2015, but did not return the second key until October 2, 2015.

5. On October 13, 2015, respondent sent a written statement to petitioners' forwarding address, by certified mail, in conformance with ordinance requirements. Said statement itemized deductions totaling \$730.00. Interest in the amount of \$34.13 was credited to the deposit. The amount of the security deposit returned to petitioners was \$279.13.

6. Both parties testified concerning 2 flea treatments which appeared as a \$105.00 deduction on the itemized statement. Petitioners had 2 cats and a bunny in the apartment during their tenancy. After petitioners moved out of the apartment, fleas were discovered in the apartment and respondent had the apartment treated by Eliminator Pest Control on October 5. The charge for treatment was \$150.00. (Respondent inadvertently transposed the numbers when writing the deduction on the itemized statement.)

7. Both parties testified concerning the deduction made for trash removal which totaled \$75.00 on the itemized statement. Respondent disposed of 2 mattresses, 2 sofa beds and miscellaneous items on October 30, 2015 at a cost of \$175.55; the rationale for charging petitioners \$75.00 was vague. Respondent attributed the items to petitioners because they were the only tenants moving out of the building at that time; another apartment was vacated approximately one week before petitioners moved out. There are 6 units in the building. Petitioners disputed leaving any extra trash.

8. Both parties testified concerning past due rent which appeared as a \$550.00 deduction on the itemized statement. Respondent's charge is for rent from September 16 to 30. Petitioners paid \$550.00 in rent for September 1 to 15. Petitioners testified that when respondent agreed to extend their move-out

date into September, it also agreed to allow petitioners to pay rent at a rate of \$35.00/day for the days in September that they occupied the apartment. Rebecca Henderson testified that when she returned the first key on September 24, respondent agreed to relieve petitioners of any obligation to pay rent beyond that date. Indeed, petitioners do not dispute that they owe rent for September 16 through 24. Respondent now claims that it should be permitted to charge rent for the remainder of September on account of Lee Henderson not returning the second key until October 2. On this issue, the Board credits petitioners' testimony that an express agreement was entered into with respondent, limiting the period of petitioners' rental obligation to September 24.

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 mailed to the tenant's forwarding address. 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). Here, although petitioners' obligation to pay rent ceased on September

24, the period of limitations to provide proper notice commenced on October 2, when Lee Henderson returned the second key. Thus, timely notice was provided.

12. Based on the evidence, the Board concludes the deduction for flea treatment was proper and reasonable as the fleas were caused by petitioners' pets.

13. Based on the evidence, the Board concludes petitioners moved out of the apartment on or by September 24, and the parties agreed that the rental rate of \$35.00/day would cease on September 24. Accordingly, a proper deduction for unpaid rent is \$315.00 (rent for September 16 through 24).

14. Based on the evidence, the Board concludes the deduction for trash was not proper as the extra trash cannot be specifically attributed to petitioners.

ORDER

Accordingly, it is hereby ORDERED:

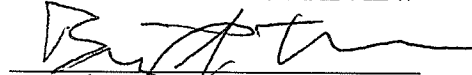
15. Petitioners Rebecca and Lee Henderson are entitled to recover from respondent Alph Realty the following amounts:

a) \$310.00 of the principal amount of the security deposit improperly withheld after October 16, 2015; and

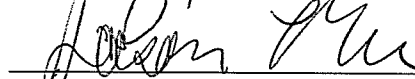
b) Additional interest of \$0.002 per day from October 17, 2015 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 30th day of December, 2015.

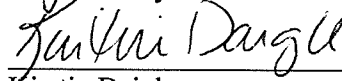
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



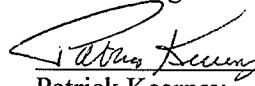
Ben Traverse



Jason L. Ecuyer



Kirstin Daigle



Patrick Kearney



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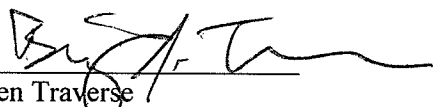
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DATED 12/30/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Raquel Jimenez
Potash Properties LLC

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

In re: Request for Hearing of RAQUEL	)	
JIMENEZ Regarding Withholding of	)	CITY OF BURLINGTON
Security Deposit by POTASH	)	HOUSING BOARD OF REVIEW
PROPERTIES LLC for Rental Unit at	)	
97-99 Buell Street, Apt. 4	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 7, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Raquel Jimenez was present and testified. Respondent Potash Properties LLC was represented at the hearing by Vince Paradis and Deborah Paradis.

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 Potash Properties LLC is the owner of a rental unit, 97-99 Buell Street, Apt. 4, in the City of Burlington which is the subject of these proceedings. Vince Paradis and Deborah Paradis manage the property.
2. Petitioner Raquel Jimenez moved into the rental unit with a lease which ran from November 1, 2003 to October 31, 2004. Each year after that, the parties signed a new lease agreement. The most recent agreement expired on October 31, 2012, but the parties amended the lease so that it would renew automatically on a month-to-month basis until it was terminated. On April 6, 2015, respondent notified petitioner, in writing, that the lease would terminate on September 30, 2015.
3. Petitioner initially paid a security deposit of \$896.00 to respondent on November 1, 2003. Over the course of multiple lease renewals, responded deducted amounts for repairs from the initial security deposit and applied the balance as a deposit for the renewed lease. The Board notes that although the security deposit was previously deducted in the context of a lease renewal, respondent was

nonetheless obligated to abide by statutory notice requirements; however, any claim arising from the past deductions is now untimely. The most recent lease agreement, executed by both parties on October 11, 2011, acknowledges the deposit as being \$674.50. Therefore, the Board finds the amount of the security deposit under consideration is \$674.50. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

4. When the tenancy terminated on September 30, 2015, the apartment was not fully vacated and petitioner asked for additional time to complete her move-out. Respondent agreed and indicated that he would be unable to check the apartment until October 5, 2015. Petitioner was able to fully vacate the apartment on October 3, 2015, which respondent confirmed on October 5.

5. On October 19, 2015, respondent sent a written statement, by certified mail, to petitioner's forwarding address in conformance with ordinance requirements. Said statement itemized deductions totaling \$207.00. The amount of the deposit returned with the statement was \$440.50. However, petitioner did not receive the statement and check because it was returned by the post office to respondent. Respondent presented the returned check at the hearing and offered it to petitioner, but she refused to accept it.

6. Interest was not credited to the deposit. The lease agreement provides that the deposit will be returned "with simple interest, computed at 2%, at the end of the lease period...."

7. Both parties testified concerning rent for October which appeared as a \$162.00 deduction on the itemized statement. Monthly rent was \$1200.00; petitioner's share of the rent was \$770.00 with Burlington Housing Authority paying the balance. No rent money was received for October even though petitioner did not vacate the apartment until October 3.

8. Both parties testified concerning the return of the apartment keys which appeared as a \$25.00 deduction on the itemized statement. Petitioner claims she left the keys in the apartment when she finished moving out of it. However, respondent did not get the keys until 3 weeks later when they were found in the apartment. By that time, respondent had already made new keys for the apartment and the lease agreement set forth a \$25.00 charge for key replacements.

9. Both parties testified regarding excess trash which appeared as a \$20.00 deduction on the itemized statement. Respondent presented a photograph of a picture frame leaning against a curbside trash receptacle but provided no invoice or receipt in support of the deduction. Petitioner acknowledged leaving the picture frame and stated that she did so because the receptacle was full.

CONCLUSIONS OF LAW

10. 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.

11. 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.

12. 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 to the tenant's forwarding address. 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 sent within 14 days after respondent discovered the apartment was vacant.

13. Based on the evidence, the Board concludes the deductions for unreturned keys and unpaid rent were proper. However, the Board concludes that petitioner was only in the apartment until October 3; therefore, a reasonable deduction for unpaid rent is \$116.13 (3 days of rent). Respondent should not

now be permitted to collect two additional days of rent on account of his being unavailable to check the apartment until October 5.

14. Based on the evidence, the Board concludes the deduction for excess trash was not proper. While petitioner acknowledged leaving a picture frame next to the garbage receptacle, there was no invoice provided to support the deduction.

15. 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 lease agreement provides that interest will be computed at 2% at the end of the lease period. Therefore, that is the rate the Board will use to calculate interest owed on the deposit. However, as a new lease agreement, noting a new deposit amount, was executed on October 11, 2011, the Board will only order recovery of interest on \$674.50 (the amount of the security deposit under the lease in effect) from November 1, 2011 through October 19, 2015.

ORDER

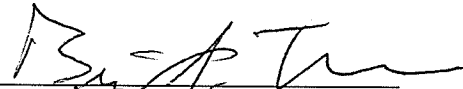
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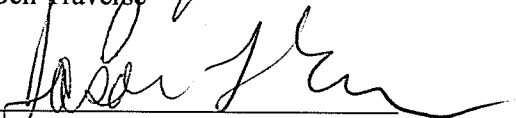
16. Petitioner Raquel Jimenez is entitled to recover from respondent Potash Properties LLC the following amounts:

- a) \$533.37 of the principal amount of the security deposit improperly withheld after October 19, 2015;
- b) Interest in the amount of \$53.48 on the entire deposit for the period November 1, 2011 through October 19, 2015; and
- c) Additional interest of \$0.03 per day from October 20, 2015 until such date as the amount improperly withheld is returned to petitioner.

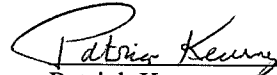
DATED at Burlington, Vermont this 30th day of December, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L'Ecuyer


Kirstin Daigle


Patrick Kearney