



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

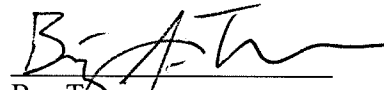
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 1/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Diane Leary
New Northgate Housing LLC

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

**In re: Request for Hearing of DIANE LEARY)
 Regarding Withholding of Security) CITY OF BURLINGTON
 Deposit by NEW NORTHGATE HOUSING) HOUSING BOARD OF REVIEW
 LLC for Rental Unit at 401 Northgate Rd)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Diane Leary was present and testified. Respondent New Northgate Housing LLC was represented at the hearing by Sara Noth 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 New Northgate Housing LLC is the owner of a rental unit, 401 Northgate Road, in the City of Burlington which is the subject of these proceedings. Sara Noth is a property manager for respondent.
2. Petitioner Diane Leary moved into the rental unit on or about March 1, 1992 under the terms of a written lease. Monthly rent at the end of petitioner's tenancy was \$468.00.
3. Petitioner paid a security deposit of \$204.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on September 30, 2016.
5. On October 12, 2016, respondent sent a statement to petitioner itemizing deductions from the deposit, in accordance with ordinance requirements. Said statement itemized deductions totaling \$713.00, including \$468.00 in unpaid rent for September 2016; \$150.00 for additional coats of paint needed to cover the color of walls that had been painted by petitioner; and \$95.00 for previous damages to the unit,

including a hole on the stairway wall. Interest in the amount of \$2.60 was credited to the deposit. As the deductions exceeded the amount of the deposit (including interest), no money was returned to petitioner.

6. On September 1, 2016, petitioner went to respondent's office and provided written notice of her intent to vacate the apartment on or before October 1, 2016. At the same time, respondent provided petitioner with a "Landlord Certification" noting that petitioner was leaving the apartment in good standing; the purpose of the certification was to allow petitioner to continue receiving housing assistance. On September 7, Sara Noth sent petitioner a follow-up letter providing some move-out instructions. In the September 7 letter, Ms. Noth also reminded petitioner that she needed to pay September rent as the lease prohibited the deposit from being used as last month's rent. Despite the September 7 letter, petitioner believed she did not owe rent for the month of September, and thus she did not pay rent for that month.

7. Petitioner requested that the Board order respondent to return double the amount withheld on her belief that the deposit was willfully withheld. The basis of petitioner's argument is that she did not believe the deductions were proper.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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). Here, timely notice was properly provided.

11. Based on the evidence, the Board concludes that the deductions for additional coats of paint were unreasonable. Respondent had not painted the rental unit at any point during petitioner's 24-year tenancy. The work required was easily attributable to normal wear and tear. However, notwithstanding the unreasonableness of these deductions, the withholding for unpaid rent in September 2016 remains more than double petitioner's original security deposit.

12. Respondent's deduction for unpaid rent for September 2016 was proper. Petitioner lived in the apartment until September 30, 2016 and did not pay rent for that month, despite being reminded on September 7 that rent was still owed. There are no circumstances under which the "Landlord Certification" provided on September 1 can be reasonably construed as excusing petitioner's obligation to pay the September rent.

13. Petitioner also argued that the withholding of the deposit was willful. If the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c). Respondent provided notice that satisfied statutory notice requirements. A dispute over the reasonableness of deductions is not evidence of willful withholding of a deposit. The Board concludes the deposit was not willfully withheld.

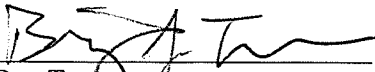
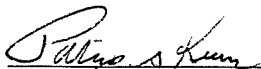
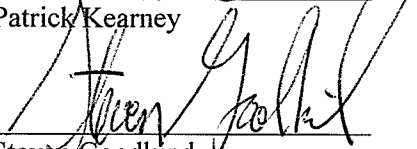
ORDER

Accordingly, it is hereby ORDERED:

14. Petitioner's request for relief is DENIED.

Dated at Burlington, Vermont this 18th of January, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Steven Goodkind



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

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CITY OF BURLINGTON

NOTICE OF DECISION

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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 1/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Leah Daws
Sonja Fuller

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

**In re: Request for Hearing of LEAH DAWS)
 Regarding Withholding of Security) CITY OF BURLINGTON
 Deposit by SONJA FULLER for Rental) HOUSING BOARD OF REVIEW
 Unit at 114 Northshore Drive)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Leah Daws was present and testified. Respondent Sonja Fuller 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 Sonja Fuller is the owner of a rental unit, 114 Northshore Drive, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Leah Daws moved into the rental unit on March 1, 2012 under the terms of a written lease. A copy of the lease was not provided to the Board.
3. Petitioner paid a security deposit of \$1600.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on October 31, 2016. Although the keys were not returned on October 31¹, respondent knew petitioner was out of the apartment on that date.
5. On November 16, 2016, respondent sent a statement to petitioner itemizing deductions from the security deposit. Said deductions totaled \$1465.52. Respondent's statement did not include notice of petitioner's right to contest the withholding of her deposit before this Board.

¹ The parties disputed the date on which the keys were returned; petitioner testified she left them in the apartment on November 1, while respondent testified they were returned on November 2.

6. Interest in the amount of \$15.74 was credited to the deposit. Respondent returned \$150.22 of the deposit to petitioner. Petitioner disputed the deductions.

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.² *See Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March

² An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

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. In this case, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statement and by failing to mail the statement within 14 days of the vacate date.³ Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER

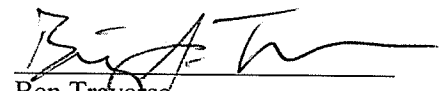
Accordingly, it is hereby ORDERED:

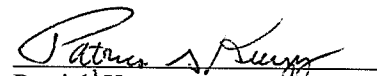
11. Petitioner Leah Daws is entitled to recover from respondent Sonja Fuller the following amounts:

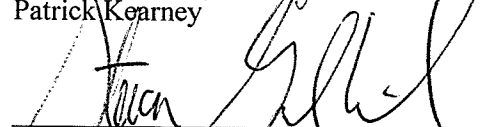
- a) \$1465.52 of the principal amount of the security deposit improperly withheld after November 14, 2016; and
- b) Additional interest of \$0.01 per day from November 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 18 of January, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind

³ Respondent argued that the vacate date was November 2 (when she claims the keys were returned). Even if the Board agreed and found that was the vacate date, the result would not have changed since respondent's notice was defective.



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DATED 1/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Chris Smith & Tara Boestan
Anne Jackson

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

**In re: Request for Hearing of CHRIS SMITH)
 and TARA BOESTAN Regarding) CITY OF BURLINGTON
 Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
 ANNE JACKSON for Rental Unit at 41)
 Southwind Drive)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on December 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioners Chris Smith and Tara Boestan were present and testified. Respondent Anne Jackson was represented at the hearing by Margo Sleeper who testified via telephone conference call.

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 Anne Jackson is the owner of a rental unit, 41 Southwind Drive, in the City of Burlington which is the subject of these proceedings. The rental unit is part of a condominium association ("Association"), which promulgates various rules and regulations for Association members. Margo Sleeper is respondent's property manager.
2. Petitioners Chris Smith and Tara Boestan moved into the rental unit with a lease which ran from April 1, 2014 to March 30, 2015. On March 28, 2015 the parties executed another lease which ran from June 1, 2015 to May 25, 2016. From that date through the end of the tenancy, petitioners leased the rental unit on a month-to-month basis. The Association's rules and regulations were never incorporated into or otherwise appended to the lease. Monthly rent was \$2200.00.
3. Petitioners paid a security deposit of \$2200.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on November 1, 2016.

5. On November 9, 2016, petitioners received a statement, in accordance with ordinance requirements, from Margo Sleeper indicating the entire deposit was being withheld for fines, water, trash removal and repair of a cupboard door. No money was returned to petitioners.

6. Interest in the amount of \$33.00 was credited to the deposit.

7. Petitioners testified that in September 2015, they started a food truck business. Whereas the business was run out of the food truck, petitioners were required to list a physical address when formally registering the business and they used the address of the rental unit. Petitioners also regularly parked the food truck overnight in the unit's driveway, until Ms. Sleeper informed them that Association rules prohibited them from parking a vehicle of that type at the unit. Shortly thereafter, petitioners secured an off-site parking spot and the food truck would only be parked in the rental unit's driveway temporarily, for the purpose of loading and unloading, as petitioners kept some supplies at and did limited food preparation work in the unit.

8. However, on or about September 21, 2016, the Association issued findings that petitioners were still running a commercial operation out of the rental unit, in violation of various rules of the Association. The Association notified respondent of these violations and stated that fines would be imposed if corrective action was not timely taken. Specifically, the Association required that respondent secure compliance with the rules and provide a written update by October 7, confirming compliance. However, after receiving the September 21 findings, neither respondent nor Ms. Sleeper visited the rental unit to confirm compliance with the Association rules. Respondent also failed to provide the Association with the requested written notice. Indeed, petitioners were not even informed of the September 21 findings until October 15, when Ms. Sleeper told them that they either needed to cease the food truck business or move. Immediately upon learning of this information, petitioners started searching for a new residence and, approximately two weeks later, they were able to vacate the unit. The last time the food truck was parked at the rental unit was in mid-October, for loading that took approximately one hour.

9. When the Association did not receive the requested written notice from respondent on October 7, it began assessing fines. These fines were assessed on a daily basis from October 8 through the end of the month and totaled \$2500.00, which respondent deducted from petitioners' security deposit.

10. Other deductions taken from the deposit were not disputed by petitioners.

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. 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, timely notice was properly provided.

14. Both state law and city ordinance allow the withholding of a security deposit for very specific reasons: nonpayment of rent; damage to the property beyond normal wear and tear which is attributable to the tenant; nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility; and expenses required to remove from the rental unit articles abandoned by the

tenant. Minimum Housing Code Sec. 18-120(a)(1) and 9 V.S.A. Sec. 4461(b). Neither the ordinance nor state law extends to permit the withholding of a security deposit for associated fines. Thus, the Board concludes that withholding the deposit for fines assessed against respondent by the Association was not permissible.

15. Additionally, even if respondent was permitted to withhold the deposit for the fines assessed, the Board concludes this was not a reasonable deduction. Petitioners were never provided a copy of the Association's rules and regulations. As set forth above, the rules and regulations were not incorporated into or otherwise appended to any lease agreement. It appears to the Board that the reason why fines were assessed against respondent is because she failed to act as required by the Association's findings of September 21. Whereas the Association provided respondent with more than two weeks to secure compliance, neither she nor Ms. Sleeper informed petitioners of the Association's findings until one week after it started assessing fines. Had respondent informed petitioners of the findings in a timely manner, they could have mitigated the assessment of fines by acting to vacate the rental unit within the compliance period.

ORDER

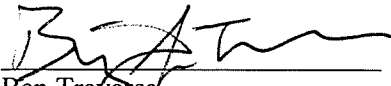
Accordingly, it is hereby ORDERED:

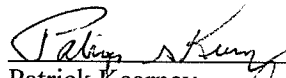
16. Petitioners Chris Smith and Tara Boestan are entitled to recover from respondent Anne Jackson the following amounts:

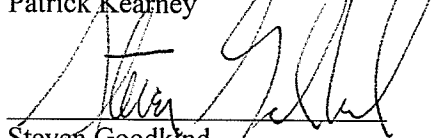
- a) \$1,781.49 of the principal amount of the deposit withheld after November 15, 2016; and
- b) Additional interest of \$0.01 per day from November 16, 2016 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 18th of January, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind