

BURLINGTON HOUSING BOARD OF REVIEW

Monday, November 16, 2020

7:00 p.m.

The meeting will be entirely remote and virtual. You can join the meeting via Zoom:

<https://us02web.zoom.us/j/89699921594?pwd=QnJpYXpRTGluVDQweWRFZUZianRtZz09>

Passcode: 458817

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 (312) 626-6799 **or** +1 (929) 205-6099 **or** +1 (301) 715-8592 **or** +1 (346) 248-7799

Webinar ID: 896 9992 1594

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AGENDA

1. Discussion of proposed minimum housing form (continued from meeting of 11/2/20)
2. Meghan Corrigan (tenant); Stu McGowan (landlord) (security deposit case) re: 41 Archibald St, #1
3. Kiaya Wood, Sabrina Farr (tenants); JH2 Investments LLC (landlord) (security deposit case) re: 45 No. Winooski Ave, Apt. 4
4. Keegan McCall (tenant); Michael Shea (landlord) (security deposit case) re: 565 Main Street

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

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Minutes

Board Members present: Josh O'Hara, Betsy McGavisk, Patrick Murphy, Olivia Pena, Charlie Gliserman

Staff present: Lisa Jones

1. Discussion of proposed minimum housing form (continued from meeting of 11/2/20)
O'Hara summarizes status of form; now looking at 2 forms – 1 for tenants and 1 for landlords.
Patti Wehman (Dept. of Permitting & Inspections): sent draft to McGavisk & Gliserman. In terms of getting form online, she'll work with her IT people to do. Form to come to DPI and then forward to Board – same process using now.
O'Hara: Board will review tenant form. Agrees should Wehman should work to get form online.
Gliserman: I'll forward Wehman's draft to entire Board for review.
2. Meghan Corrigan (tenant); Stu McGowan (landlord) (security deposit case) re: 41 Archibald St, #1 – **case settled**
3. Kiaya Wood, Sabrina Farr (tenants); JH2 Investments LLC (landlord) (security deposit case) re: 45 No. Winooski Ave, Apt. 4
Present were: Kiaya Wood, Sabrina Farr, Jim Healy; all parties sworn in.
Board takes all evidence and testimony. Hearing concluded.
4. Keegan McCall (tenant); Michael Shea (landlord) (security deposit case) re: 565 Main Street
Present: Keegan McCall; McCall sworn in.
Board takes evidence & testimony from McCall. Hearing concluded.

Meeting adjourned.

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

**In re: Request for Hearing of KIAYA WOOD)
And SABRINA FARR Regarding) Security Deposit Appeal
Withholding of Security Deposit by JH2)
INVESTMENTS LLC for Rental Unit at)
45 No. Winooski Ave, Apt. 4)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 16, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Charlie Gliserman, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Kiaya Wood and Sabrina Farr were present and testified. Respondent JH2 Investments LLC was represented at the hearing by Jim Healy 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 JH2 Investments LLC is the owner of a rental unit, 45 No. Winooski Avenue, Apt. 4, in the City of Burlington which is the subject of these proceedings. Jim Healy manages the property.
2. Petitioners Kiaya Wood and Sabrina Farr moved into the rental unit with a written lease which ran from January 1, 2020 to May 31, 2020. Monthly rent was \$1380.00.
3. Petitioners paid a security deposit of \$1380.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. When petitioners written lease ended on May 31, 2020, they remained living in the apartment. In July, respondents requested that petitioners sign a new lease if they wanted to

continue living in the apartment; respondents also informed them that the monthly rent would increase. In the absence of signing a new lease, respondents noted that the tenancy would terminate August 31, 2020. Petitioners chose not to enter into a new lease.

5. Petitioner Kiaya Wood vacated the apartment by August 31, but petitioner Sabrina Farr stayed in the unit until September 1, 2020. There was conflicting testimony and evidence relating to when petitioners were to be out of the apartment. Phone conversations between Kiaya Wood and Sharon Harkness, and Kiaya Wood and Jeff Harkness, (submitted into evidence by petitioners) indicate they gave petitioners permission to vacate the apartment on September 1 by 9 a.m. However, in an August 30 email from Jim Healy to petitioners, he clearly tells petitioners they must be out of the apartment by August 31 since new tenants were moving in on September 1, 2020.

6. On or about September 21, 2020, respondents sent a check made payable to Kiaya Wood in the amount of \$737.42. The memo portion of the check indicates it is the return of the security deposit. Respondents did not send a written statement itemizing deductions from the deposit. However, in an email, Jim Healy told petitioners if they remained in the unit after August 31, they would forfeit their deposit. Jim Healy testified the amount withheld was for hotel bills for the new tenants (because they weren't able to move into the unit as Sabrina Farr didn't vacate on August 31) and the cost to have someone else do the apartment turnover (due to Sabrina Farr's delay in moving out).

7. Petitioners argued that the failure to return the deposit was willful. Petitioners argued that they didn't receive a breakdown of the damages after requesting one and they were told the new tenants weren't moving in until September 1.

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). Respondents did not provide a written statement itemizing deductions from the deposit and they did not return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondents forfeited the deposit.

11. If the failure to return a deposit with a written statement within 14 days of the vacate date is willful, the landlord is liable for double the amount wrongfully withheld. Minimum

Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that the deposit was willfully withheld because they asked for a breakdown of the deductions, but never got one. In addition, they were told new tenants were moving into the apartment on September 1. The Board concludes there is insufficient evidence to show that the deposit was willfully withheld.

12. While the Board has already concluded that respondents forfeited the right to withhold the deposit, we also note that the deductions taken from the deposit were not proper. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant. Respondents withheld part of the deposit for hotel bills for the new tenants because they weren't able to move into the apartment due to Sabrina Farr not vacating, and the cost to have someone present at the apartment for turnover. However, neither of those deductions are contemplated under city ordinance as being proper deductions from a security deposit.

13. Petitioners are 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:

14. Petitioners Kiaya Wood and Sabrina Farr are entitled to recover from respondent JH2

Investments, LLC, the following amounts:

- a) \$642.58 of the principal amount of the security deposit improperly withheld after September 15, 2020;
- b) Interest in the amount of \$2.58 on the entire deposit for the period January 1, 2020 to September 15, 2020; and
- c) Additional interest of \$0.004 per day from September 16, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Pena
Olivia Pena

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

**In re: Request for Hearing of KEEGAN)
 McCALL Regarding Withholding of) Security Deposit Appeal
 Security Deposit by MICHAEL SHEA, JR)
 And MICHAEL SHEA, SR. for Rental)
 Unit at 565 Main Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 16, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena, Charlie Gliserman and Betsy McGavisk were also present. Petitioner Keegan McCall was present and testified. Respondents Michael Shea, Jr. and Michael Shea, Sr., although notified of the hearing and the opportunity to be heard, were not present.

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. Respondents Michael Shea, Jr. and Michael Shea, Sr., are the owners of a rental unit, 565 Main Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Keegan McCall moved into the rental unit on August 1, 2020 with a written lease. Monthly rent was \$995.00.
3. Petitioner paid a security deposit of \$995.00 to respondents. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. On August 3, 2020, petitioner gave respondents his 60-day notice of terminating the lease. Petitioner's written notice informed respondents that he would be moving out on

September 30, 2020; petitioner's notice also included his forwarding address for the return of his security deposit. Petitioner vacated the apartment on September 5, 2020.

5. As of the date of the Board's hearing, respondents had not returned the security deposit to petitioner or sent a written statement informing him of any deductions from the deposit. When petitioner asked respondents, twice, about the return of his deposit, respondents stopped replying to his texts. Petitioner argued that respondents were willfully withholding his deposit. In addition, to respondent's failure to respond to his requests about the deposit, petitioner also argued that respondents are not new landlords, and therefore, they should be well aware of their responsibility to return the deposit or provide written notice of withholding.

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 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). Respondents did not return the deposit and did not provide a written statement itemizing any deductions from the deposit. Therefore, the Board concludes respondents forfeited the deposit.

9. If the failure to return a deposit with a written statement within 14 days of the vacate date is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioner asked about the return of his deposit at least twice. Once he started doing so, respondent(s) stopped communicating with him. Respondents are experienced landlords and should be well aware of their responsibilities with respect to the return of a security deposit. The Board concludes that respondents' failure to return the deposit or to provide a written statement of deductions, as well as the fact that they stopped communicating with petitioners when he asked about his deposit, demonstrates a willful withholding of the deposit.

10. Petitioners are 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 Keegan McCall is entitled to recover from respondents Michael Shea, Sr. and Michael Shea, Jr., the following amounts:

a) \$995.00 of the principal amount of the security deposit improperly withheld after September 19, 2020;

b) \$995.00, double the amount willfully withheld; and

c) Interest of \$0.007 per day from August 1, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 10th day of December, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Pena
Olivia Pena