

BURLINGTON HOUSING BOARD OF REVIEW

Monday, November 5, 2018

7:00 p.m.

**Community Room, Burlington Police Department
1 North Avenue**

AGENDA

1. Evan Deutsch & Emily Pendergraft (tenants); Monica L. Heath Revocable Trust/Karen LaPoint (landlord) (security deposit case) re: 355 So. Union St, Apt. 5

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 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 865-7145.



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 11/19/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Patrick Kearney
Acting Board Chair

cc: Evan Deutsch & Emily Pendergraft
Karen LaPoint

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

**In re: Request for Hearing of EVAN)
DEUTSCH and EMILY PENDERGRAFT) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by KAREN LAPOINT for Rental)
Unit at 355 So. Union Street, #5)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 5, 2018. Board Member Patrick Kearney presided. Board Members Steven Goodkind and Patrick Murphy were also present. Petitioners Evan Deutsch and Emily Pendergraft were present and testified. Respondent Karen LaPoint was present and testified. Also appearing and testifying as witnesses were Eric LaPoint and Matt Coleman.

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. The Monica L. Heath Revocable Trust is the owner of a rental unit, 355 South Union Street, #5, in the City of Burlington which is the subject of these proceedings. Respondent Karen LaPoint, the daughter of Monica L. Heath, manages the property and is the agent for the property owner.
2. Petitioners Evan Deutsch and Emily Pendergraft moved into the rental unit with a written lease which ran from June 1, 2018 to May 24, 2019. Monthly rent was \$1895.00.
3. Petitioners paid a security deposit of \$1895.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. In mid-July, 2018, petitioners notified respondent of their intent to vacate the apartment. Respondent found a new tenant for the apartment beginning on September 1, 2018 and requested that petitioners move out by August 30. Petitioners agreed to move out by August 30, but requested that respondent reimburse them for 2 days of rent (for August 30 and 31).

5. Petitioners vacated the apartment on August 30, 2018. Petitioners sent respondent an email on August 30 at 10:15 a.m. confirming they were completely moved out of the apartment and that the keys were left on the mantle in the living room.

6. On September 14, 2018, respondent returned \$1526.00 of the deposit to petitioners with a letter itemizing 2 deductions from the deposit. Petitioners disputed the deductions and the timeliness of respondent's statement. Respondent's letter did not inform petitioners of their right to dispute the withholding of their deposit before this Board.

7. Interest was not credited to the deposit.

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). Petitioners vacated the apartment on August 30, 2018. Therefore, respondent was required to return the deposit and statement itemizing any deductions to petitioners by September 13, 2018.

11. 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.¹ 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. 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 return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. 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:

13. Petitioners Evan Deutsch and Emily Pendergraft are entitled to recover from respondent Karen LaPoint the following amounts:

a) \$369.00 of the principal amount of the security deposit improperly withheld after September 13, 2018;

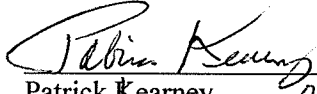
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

b) Interest in the amount of \$1.36 on the entire deposit for the period June 1, 2018 to September 13, 2018; and

c) Additional interest of \$0.002 per day from September 14, 2018 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 19th day of November, 2018.

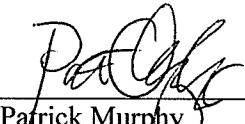
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Patrick Kearney



Steven Goodkind



Patrick Murphy