

BURLINGTON HOUSING BOARD OF REVIEW

Monday, November 4, 2019

7:00 p.m.

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

AGENDA

1. Shana Casava (tenant); Richard Bove and Josephine Bove (property owners)/Pearl Street Housing Venture (Lessee) (security deposit case) re: 90 Pearl St, Apt. 409 (postponed from meeting of 10/21/19)
2. Brendan Grahm, Konner Sherman, Emilio Fornatora, Kaitlyn Beers (tenants); David Bauer/Full Circle Property Management (landlord) (security deposit case) re: 219 Plattsburgh Ave (postponed from meeting of 10/21/19)
3. Sarah Carbonneau and Charlotte MacLauren (tenants); Peter Ploof (landlord) (security deposit case) re: 36 Russell Street
4. Jill Smith and Johnathan Patterson (tenants); Offenhartz Inc (landlord) (security deposit case) re: 179 Elmwood Ave, #1

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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 12/3/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Jill Smith & Johnathan Patterson
Offenhartz, Inc.

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

In re: 179 Elmwood Ave. #1

**(Jill Smith & Johnathan Patterson,
Tenants; Offenhartz, Inc., Landlord)**

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Security Deposit Appeal

DECISION AND ORDER

The above-captioned matter came before the Housing Board of Review (“the Board”) on November 4, 2019. Board Chair Joshua O’Hara presided. Board Members Patrick Kearney, Betsy McGavisk, Patrick Murphy, and Olivia Pena were also present. Jill Smith and Johnathan Patterson (“the Tenants”) were present and represented themselves. Steven Offenhartz was present and represented Offenhartz, Inc. (“the Landlord”). After hearing the testimony and considering the written submission of the Tenants and the Landlord, the Board makes the following factual findings and conclusions of law.

Factual Findings

1. The Landlord owns a rental unit, 179 Elmwood Avenue, #1, in the City of Burlington, which is the subject of these proceedings.
2. The Tenants moved into the rental unit on August 15, 2018. They paid the Landlord a security deposit of \$1,500.
3. The terms of the lease were conflicting. According to the written lease submitted by the Landlord at the November 4, 2019 hearing, the total rent due from the Tenants for the entirety of their tenancy was \$18,000. Ex. 2 at 1. However, the lease also includes a payment schedule and a term of the lease which could be construed to require a different payment amount. Under the payment schedule, Tenants were to pay Landlord \$750 upon move-in on August 15, 2018, and then \$1,500 on the first of the month until the end of the lease on July 24, 2019. Id.

4. If the payment schedule is credited, then the Tenants would have owed the Landlord \$750 on August 15, 2018, and then eleven payments of \$1,500 (due Sept. 1st, Oct. 1st, Nov. 1st, Dec. 1st, Jan. 1st, Feb. 1st, Mar. 1st, Apr. 1st, May 1st, Jun. 1st, and Jul. 1st). Ex. 2 at 1. Payments due from the Tenants would have totaled \$17,250 under this scenario.

5. In its security deposit transmittal, the Landlord contended the Tenants did not pay rent on July 1, 2019, and deducted \$1,500 from the security deposit. The transmittal also credited the Tenants with \$2 of interest, which the Board finds is an appropriate amount of interest to credit the Tenants. In support of the deduction, the Landlord included a document titled “Offenhartz Inc. Tenant Balance Detail - All Transactions.” Ex. 5. The balance sheet includes monthly invoices for the rent due from Tenants, payments from the Tenants, and a credit after the term of the lease expired, which will be discussed in more detail below.

6. Tenants agreed they had not paid rent, but asserted that they did not owe the Landlord a full month’s rent. They contended that an agent of the Landlord agreed they could prorate the July rent, and that they only owed \$1161.29 because they moved out on July 24, 2019. Mr. Offenhartz denied any person working for the Landlord had the authority to agree to a proration of rent.

7. The Board must reconcile the conflicting terms of the lease in order to decide whether the Tenants owed the Landlord rent. The Board finds that the Tenants owed the Landlord \$18,000. The lease clearly states that the “total rent for the lease period is \$18,000.” Ex. 2 at 1. The language which follows in the lease merely sets up a payment schedule, but does not alter the basic terms of the lease.

8. The Board also finds that the Tenants owed the Landlord rent at the conclusion of the lease, but not in an amount suggested by either party. The Landlord’s balance sheet shows that the Tenants made a \$750 payment on August 16, 2018, and then \$1,500 payments August 6th,

September 10th, October 24th, November 20th, January 8th, January 28th, February 22nd, March 27th, April 21st, May 28th, and July 5th. Ex. 5. Thus, according to the Landlord's balance sheet, the Tenants paid \$17,250 of rent during the lease. The Board therefore finds that the Tenants owed the Landlord \$750 in rent at the conclusion of the lease.

9. The Landlord's balance sheet also includes a credit of \$1,502, dated July 29, 2019. This is consistent with the amount of the Tenant's security deposit (with \$2 interest) as outlined on the Landlord's security deposit transmittal. Compare Ex. 1 with Ex. 5. The credit and the transmittal also bear the same date. The Board finds this credit entry in the balance sheet reflects Landlord's accounting for the security deposit.

10. The Landlord also charged the Tenants \$125 to shampoo the carpets in the unit. The Tenants testified that the carpets had an odor when they moved in and that they requested the Landlord remove the carpets, but settled for a carpet shampooing instead. That shampooing did not remove the odor. The Board finds that the need to shampoo the carpets was related to the normal wear and tear for this unit.

11. The Landlord also charged the Tenants \$150 for repairs to a storm door screen and a bedroom screen. At the hearing, Mr. Offenhartz acknowledge that the amount of the repairs should have been consistent with the lease: \$60 per screen, or \$120. The Tenants disputed that they caused the damage to the screens. However, the move-in checklist shows that the screens were undamaged when Tenants moved in. The Board concludes Tenants caused the damage and that a reasonable deduction was \$120.

12. The Landlord also charged the Tenants \$100 for cleaning of the rental unit's kitchen. The Tenants testified that the kitchen was clean when they moved out, but the photographs submitted

by the Landlord in Exhibit 11 contradict their testimony. The Board finds the cleaning was beyond normal wear and tear and that the deduction of \$100 to clean the kitchen was reasonable.

13. The Landlord also charged the Tenants \$120 to repair two broken refrigerator side bars. The Tenants acknowledged breaking one, but not the other. The Board finds that the damage was attributable to the Tenants, but finds that a reasonable deduction for the damage is \$50 per bar, or \$100.

14. The Landlord also charged the Tenants \$50.88 to replace a smoke detector. The smoke detector was present when the Tenants moved in, but was absent during a December, 2018 inspection. The Landlord billed the Tenants \$50.88 for the smoke detector on December 26, 2018. Ex. 5. The bill was never paid. Id. The Board finds this was a reasonable deduction from the security deposit.

Conclusions of Law

15. The City of Burlington's security deposit ordinance, Minimum Housing Code § 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.

16. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. §§ 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. § 4453.

17. 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 § 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code § 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 § 18-120(c) and 9 V.S.A. § 4461(e). Proper notice was provided.

18. Under the Minimum Housing Code, a landlord may deduct from the security deposit the actual cost to repair damage beyond normal wear and tear which is attributable to a tenant. § 18-120(c). A landlord may also deduct from the security deposit for the nonpayment of rent. Id.

19. Based upon its findings above, the Board concludes that the Landlord was entitled to make the following deductions: 1) \$750 for the nonpayment of rent; 2) \$120 to repair screens in the unit; 3) \$100 for the cleaning of the kitchen; 4) \$100 to repair the side bars in the refrigerator; and 5) \$50.88 to replace the smoke detector. The total of the allowable deductions is \$1,120.88.

Order

Accordingly, it is hereby ORDERED:

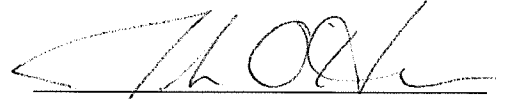
20. The Tenants Jill Smith and Johnathan Patterson are entitled to recover from the Landlord Offenhartz, Inc. the following amounts:

a) \$381.12 of the security deposit improperly withheld after August 7, 2019; and

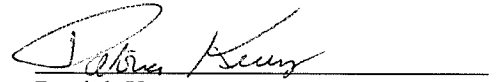
b) Additional interest of \$0.003 per day from August 8, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 3rd day of December, 2019.

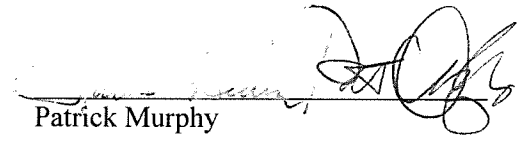
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



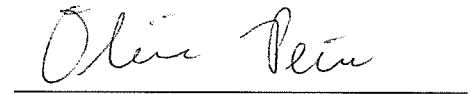
Josh O'Hara



Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk



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

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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 4/26/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Brendan Grahn
David Bauer c/o Stephanie Gilbert, Full Circle Property Management

**In re: Request for Hearing of BRENDAN)
GRAHN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by DAVID BAUER for) HOUSING BOARD OF REVIEW
Rental Unit at 219 Plattsburgh Avenue)**

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

1. Respondent David Bauer is the owner of a rental unit, 219 Plattsburgh Avenue, in the City of Burlington which is the subject of these proceedings. Stephanie Gilbert and Sarah Carboneau from Full Circle Property Management manage the property.

2. Petitioner Brendan Grahn and Emilio Fornatora, Kaitlyn Beers and Konner Sherman moved into the rental unit with a written lease which ran from August 1, 2018 to July 27, 2019. Petitioner and his roommates were jointly and severally liable under the lease. Petitioner represented the interests of all the tenants at the hearing. Monthly rent was \$2300.00.

3. Petitioner and his roommates paid a security deposit of \$2300.00 to respondent; they were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. The parties disputed the move-out date. Per the terms of the lease, the tenancy ended at noon on July 27, 2019. Full Circle Property Management sent petitioner and his roommates a letter on July 9, 2019 reminding them that the lease expired on July 27. Petitioner testified they were out of the unit on

July 27, 2019 and left the keys to the unit on the counter. Emilio Fornatora emailed Sarah Carbonneau on July 29, 2019 and told her they had moved out “last weekend” (ie, July 27). Mr. Fornatora also asked if any of the tenants needed to be present at the move out inspection and he asked how the deposit would be returned. In her reply sent on July 29, Ms. Carbonneau indicated they were headed over to the property to conduct a move out inspection and collect the keys that were left for them; she indicated the tenants did not need to be present. Ms. Carbonneau informed Mr. Fornatora that the security deposit transmittals are sent out within 14 days. When Ms. Carbonneau went to the property she noticed there was trash left outside which was overflowing and blowing all over the property.

5. On the morning of July 30, Sarah Carbonneau emailed Emilio Fornatora and informed him of the garbage situation; she told Mr. Fornatora if the trash wasn’t cleaned up, they would remove it and the charge would be deducted from the security deposit. Mr. Fornatora indicated the garbage would be cleaned up that day (July 30). Respondent’s security deposit transmittal form to the tenants indicates a move-out date of July 30, 2019. However, Sarah Carbonneau and Stephanie Gilbert testified they had possession of the unit on July 31, 2019 – the date they actually entered the unit.

6. The Board finds the move out date to be July 29, 2019. Regardless of whether or not the property manager gave the tenants the opportunity to clean up the outside trash, Emilio Fornatora’s email of July 29 was clear that the tenants had vacated the unit and the keys were inside it.

7. On August 13, 2019, the property manager put the notice of withholding to petitioner, Kaitlyn Beers and Konner Sherman in the mailbox outside the post office at 5:05 p.m., as indicated by a handwritten notation on the certified mail receipt. Emilio Fornatora did not want the notice mailed to him and asked to pick it up when it was ready. Mr. Fornatora picked up the notice on August 14, 2019. The statement of withholding itemized 2 deductions from the deposit: \$140 for 4 hours of cleaning and \$50 for disposing of food and other items left in the unit. Petitioner disputed the timeliness of the notice, as well as the deductions from the deposit.

8. Respondent returned \$2111.38 of the deposit to petitioner and his roommates with the notice mailed on August 13. Interest in the amount of \$1.38 was credited to the deposit.

9. Petitioner argued that the deposit was willfully withheld and requested double the amount wrongfully withheld. Petitioner believed the property manager sent the notice and deposit return late as a way of getting even with the tenants because they challenged the property manager's behavior during the tenancy and they cleaned up the trash after moving out, thereby avoiding a fine. The Board finds petitioner's arguments unconvincing.

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 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). The parties disputed the move out date and this Board found the vacate date to be July 29, 2019. Accordingly, respondent was required to mail or hand-deliver the statement to petitioner by August 12, 2019. The property manager put the notice of withholding in a mailbox after post office hours on

August 13, 2019. The Board concludes notice was not timely. Therefore, respondent forfeited the right to withhold any part of the deposit.

13. Petitioner argued that respondent willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). The Board concludes there is no evidence that \$190.00 of the deposit was willfully withheld.

ORDER

Accordingly, it is hereby ORDERED:

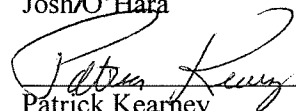
14. Petitioner Brendan Grahn (as the representative of all the tenants) is entitled to recover from respondent David Bauer the following amounts:

- a) \$190.00 of the principal amount of the security deposit improperly withheld after August 12, 2019; and
- b) Additional interest of \$0.001 per day from August 13, 2019 until such date as the amount improperly withheld is returned to petitioner.

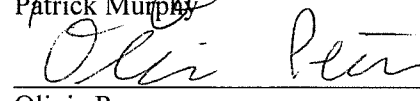
DATED at Burlington, Vermont this 26th day of November, 2019.

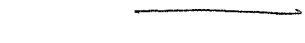
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Patrick Murphy


Olivia Pena


Betsy McGavisk



HOUSING BOARD OF REVIEW

City of Burlington

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Burlington, Vermont 05401
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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

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DATED 11/26/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Shana Casava
Rick Bove for Pearl Street Housing Venture

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

**In re: Request for Hearing of SHANA CASAVA)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by PEARL STREET HOUSING) HOUSING BOARD OF REVIEW
VENTURE, LP for Rental Unit at 90)
Pearl Street, Apt. 409)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 4, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Shana Casava was present and testified. Respondent Pearl Street Housing Venture, LP was represented at the hearing by Rick Bove who testified.

Board Member Betsy McGavisk disclosed prior to the hearing that she had a general conversation with petitioner unrelated to the case before this Board, but believed she could be fair and impartial in the matter before the Board. Neither party opposed her hearing the case.

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. Richard Bove and Josephine Bove are the record owners of the property at 90 Pearl Street. Respondent Pearl Street Housing Venture, LP leases the property upon which stands the rental property identified as 90 Pearl Street, #409, in the City of Burlington which is the subject of these proceedings. Rick Bove manages the property.
2. Petitioner Shana Casava moved into the rental unit on or about August 1, 2018.
3. Champlain Office of Economic Opportunity ("CVOEO") sent a check to Bove Brothers Realty¹ in the amount of \$1082.00 on August 1, 2018; according to a letter accompanying the check, it

¹ Rick Bove is president and duly authorized agent of Bove Brothers Realty Inc., general partner of Pearl Street Housing Venture, LP.

was to be used as a security deposit for petitioner. Petitioner claimed that \$600.00 of the deposit money was her money. The August 8 letter informed respondent that the deposit was being paid through federal or state grant funding and advised them: “[w]hen the tenant leaves the unit, please return this letter, along with the deposit (minus any allowable deductions) to our office....”

4. Petitioner vacated the apartment on June 30, 2019.

5. On July 8, 2019, Deb McCaffrey (another property manager) sent a letter to petitioner at her last known-address (the address of the rental unit in question) informing her that the deposit was being returned to CVOEO since it was paid by them. Petitioner did not receive the letter.

6. Interest was not credited to the security deposit.

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. The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). In *Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116 (VT Supreme Court, September 2015), the Court again held “strict compliance with the statute is required, and that ‘[w]e cannot allow an alternative method of giving notice’” (citing *In re Soon Kwon*, 2011 VT 26, ¶17). The plain language of the statute and ordinance requires return of the deposit to the tenant, not another entity; therefore, we will implement the ordinance according to its plain language. *State v. Berard*, 2019 VT 65, p. 12. The deposit must be returned to the tenant.

11. 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 Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioner Shana Casava is entitled to recover from respondent Pearl Street Housing Venture the following amounts:

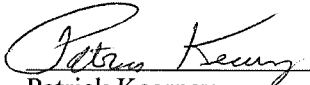
- a) \$1082.00 of the principal amount of the security deposit improperly withheld after July 14, 2019;
- b) Interest in the amount of \$2.58 on the entire deposit for the period August 1, 2018 to July 14, 2019; and
- c) Additional interest of \$0.007 per day from July 15, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 26th day of November, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



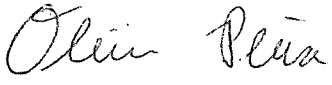
Josh O'Hara



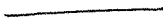
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 1145-12-19 Cncv

Pearl Street Housing Venture, LP,
Appellant

v.

Shana Casava,
Appellee

VERMONT SUPERIOR COURT
FILED

JAN 22 2020

CHITTENDEN UNIT

RULING ON APPEAL

This is an appeal from the Burlington Housing Board of Review. The Board found that the landlord, Pearl Street Housing, had improperly returned the security deposit in this matter to Champlain Valley Office of Economic Opportunity (CVOEO) instead of to the tenant, Shana Casava. Landlord appeals.

The Board found that CVOEO had paid Casava's security deposit of \$1,082, with a cover letter asking that it be returned to CVOEO (after any deductions) when her tenancy terminated. The letter stated:

Please be advised that this deposit is being paid through federal or state grant funding. **When the tenant leaves the unit, please return this letter, along with the deposit (minus any allowable deductions) to our office.**

August 1, 2018 Letter (emphasis in original). That is what Landlord did, sending a timely letter to Casava advising her that the deposit had been returned to CVOEO. Casava objected, and the Board agreed with her. The Board ruled that because the statute and the Burlington Minimum Housing Code state that security deposits are to be returned to the tenant, Landlord was required to send the money to Casava.

The statute at issue states that a landlord "shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days" of learning

the tenant has left. 9 V.S.A. § 4461(c). The Burlington code likewise requires return of the deposit to the tenant. Burlington Code of Ordinances § 18-120(c). Citing In re Soon Kwon, 2011 VT 26, 189 Vt. 598 (mem.), the Board concluded that this language must be strictly construed, requiring payment to the tenant even though the funds came from CVOEO.

While the Board's interpretation of the law was not unreasonable, the court concludes that the Board erred. The statute and the ordinance refer to *returning* a deposit to a tenant. That implies receipt of the deposit from the tenant. One does not return something unless it was given in the first place. If the payment was from someone else, with the clear intent that it would remain that payor's funds rather than the tenant's, there is no one to "return" it to other than the place it came from. Moreover, interpreting the law as the Board did might well lead to entities such as CVOEO deciding not to assist tenants with such funds, a result that would be detrimental to both landlords and tenants. The Legislature could not have intended such a result.

While the Board was correct that Landlord should have added interest to the check to CVOEO per statute, that is a moot point as it is an issue only CVOEO, not Casava, would have standing to raise.

Order

The ruling of the Board is reversed. Payment of the security deposit to CVOEO satisfied the statute and ordinance.

Dated at Burlington this 21st day of January, 2020.



Helen M. Toor
Superior Court Judge

BURLINGTON HOUSING BOARD OF REVIEW

Monday, November 4, 2019

7:00 p.m.

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

Minutes

Members present: Josh O'Hara, Patrick Kearney, Patrick Murphy, Betsy McGavisk, Olivia Pena

Staff present: Lisa Jones

1. Shana Casava (tenant); Richard Bove and Josephine Bove (property owners)/Pearl Street Housing Venture (Lessee) (security deposit case) re: 90 Pearl St, Apt. 409 (postponed from meeting of 10/21/19)
Present were: Shana Casava, Rick Bove; the parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
2. Brendan Grahm, Konner Sherman, Emilio Fornatora, Kaitlyn Beers (tenants); David Bauer/Full Circle Property Management (landlord) (security deposit case) re: 219 Plattsburgh Ave (postponed from meeting of 10/21/19)
Present were: Brendan Grahm, Stephanie Gilbert, Sarah Charbonneau; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
3. Sarah Carbonneau and Charlotte MacLauren (tenants); Peter Ploof (landlord) (security deposit case) re: 36 Russell Street
Case was postponed at request of landlord
4. Jill Smith and Johnathan Patterson (tenants); Offenhartz Inc (landlord) (security deposit case) re: 179 Elmwood Ave, #1
Present were: Jill Smith, Johnathan Patterson, Steven Offenhartz; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.