

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

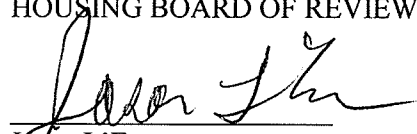
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 5/5/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Jason L'Ecuyer
Board Vice Chair

cc: Chris Khamnei
Matthew Perry

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 230 Pine Street, Unit 1) 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, 230 Pine Street, Unit 1, in the City of Burlington which is the subject of these proceedings.

2. On March 5, 2015, Code Enforcement Officer Matthew Perry conducted a complaint investigation at the premises. In his Order dated March 6, 2015, Mr. Perry noted several deficiencies in the unit, including but not limited to water damage to the ceiling and east wall of the rear bedroom and damage to some clapboards on the exterior of the house.

3. Section 18-71(c) of the Minimum Housing Code requires every roof to be structurally sound, tight, and free of defects that might admit rain and roof drainage. Additionally, roof drainage must be prevented from causing dampness in the walls or interior portions of the building.

4. Section 18-71(b) of the Minimum Housing Code requires every exterior wall to be free of holes, breaks, loose or rotting boards, and any other conditions which admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building.

5. Section 18-72(b) of the Minimum Housing Code requires interior walls and ceilings to be maintained in sound condition and good repair; there shall be no cracked or loose plaster, peeling paint, decayed wood, or other deteriorated or damaged surface conditions.

6. Petitioner and Matthew Perry disputed the condition of the apartment at the time of its inspection on March 5, 2015. Although petitioner admitted to there being some water damage in the apartment due to work being done on the building (including replacing the roof), he testified that repairs to the interior wall and ceiling were fixed before Mr. Perry's inspection. Photographs of the unit taken by Mr. Perry during his inspection confirm the presence of water stains on the wall and ceiling; at the time of the inspection, these areas were damp to the touch, indicating moisture was coming into the interior of the apartment. Moreover, a photograph of the exterior wall indicates that some siding was pulled off and in disrepair.

7. At hearing, petitioner agreed that to the extent any deficiencies still existed, they would be rectified by May 1, 2015, with the exception of replacing the roof, for which he requested an additional 60 days. Mr. Perry agreed to conduct a new inspection on May 1, 2015.

CONCLUSIONS OF LAW

8. 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.

9. Here, petitioner failed to submit evidence sufficiently demonstrating he was improperly cited for the deficiencies set forth in the Minimum Housing Order. Per the agreement of the parties at hearing, petitioner has until the time of the scheduled inspection on May 1, 2015 to rectify the cited deficiencies.

10. It is otherwise unnecessary for the Board to grant petitioner an extension to replace the property's roof. The Minimum Housing Code requires only that the roof be structurally sound and tight, and to not have defects which might admit rain and roof drainage. Petitioner is not expressly required to replace the current roof, as long as it comes into compliance with these minimum requirements.

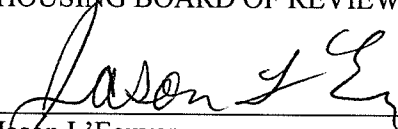
ORDER

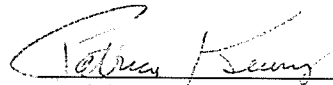
Accordingly, it is hereby ORDERED:

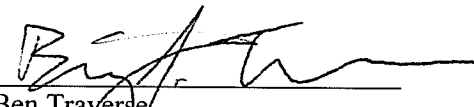
10. The Minimum Housing Order dated March 6, 2015 related to 230 Pine Street, Unit 1 is **AFFIRMED**. Petitioner has until the time of the scheduled inspection on May 1, 2015 to comply with the Order.

DATED at Burlington, Vermont this 5th day of May, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuier


Patrick Kearney


Ben Traverse



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

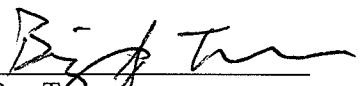
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 11/16/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Ryan Beliveau & Jess Buchanan
985 Associates LTD

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

**In re: Request for Hearing of RYAN)
BELIVEAU & JESSICA BUCHANAN)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by 985 ASSOCIATES) HOUSING BOARD OF REVIEW
LTD for Rental Unit at 42 Little Eagle)
Bay)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2015. For purposes of expedition, Board Members Kirstin Daigle and Patrick Kearney were appointed as Hearing Officers to hear and decide the above-referenced matter. Petitioner Jessica Buchanan was present and testified. Respondent 985 Associates LTD was represented at the hearing by Patricia Preseault and Holly Hammond.

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 985 Associates LTD is the owner of a rental unit, 42 Little Eagle Bay, in the City of Burlington which is the subject of these proceedings. Holly Hammond manages the property.
2. Petitioners Ryan Beliveau and Jessica Buchanan moved into the rental unit on November 1, 2010 under the terms of a written lease.
3. Petitioners paid a security deposit of \$1005.00 to respondent. Petitioners were to receive back their security deposit at the end of the tenancy minus any amounts withheld for damages.
4. Petitioners vacated the apartment on July 27, 2015.
5. On August 4, 2015, respondent sent a written to statement to petitioners' forwarding address in conformance with ordinance requirements. Said statement itemized deductions totaling \$400.07. The amount of the deposit returned to petitioners was \$758.19.
6. Interest in the amount of \$3.26 was credited to the deposit.

7. Both parties testified concerning painting in the apartment which appeared as a \$323.25 deduction on the written statement. Respondent repainted the apartment because of damage to the walls. There were holes in the walls and damage to the drywall that needed to be repaired and repainted. In addition, there was smoke damage on the walls. Some drywall was damaged when petitioners pulled a surge protector off of the wall after a short circuit in the building in June, 2015. The cost to repaint the apartment was \$646.50, but respondent only deducted half of the cost from petitioner's deposit. The apartment had been painted 4 months prior to the date petitioners moved into the unit.

8. Other deductions indicated in the written statement were not contested.

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. 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 and proper notice was provided.

12. Based on the evidence, the Hearing Officers conclude that given petitioners lived in the apartment for almost 5 years, a reasonable deduction for painting attributable to damage beyond normal wear and tear is \$161.63.

ORDER

Accordingly, it is hereby ORDERED:

13. Petitioners Ryan Beliveau and Jessica Buchanan are entitled to recover from respondents 985 Associates LTD the following amounts:

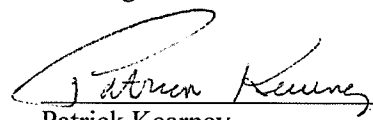
a) \$161.62 of the principal amount of the security deposit improperly withheld after August 10, 2015; and

b) Additional interest of \$0.001 per day from August 11, 2015 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 16th day of November, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Hearing Officer


Patrick Kearney
Hearing Officer



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

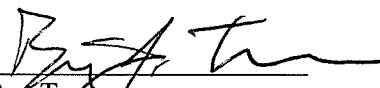
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 11/16/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Patrick Crowley
237 Maple LLC

**In re: Request for Hearing of PATRICK)
CROWLEY Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by 237 MAPLE LLC) HOUSING BOARD OF REVIEW
for Rental Unit at 237 Maple St, Unit 1)**

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

1. Respondent 237 Maple LLC is the owner of a rental unit, 237 Maple Street, Unit 1, in the City of Burlington which is the subject of these proceedings. Sheila Jacobs manages the property
2. Petitioner Patrick Crowley moved into the rental unit on May 2, 2015 with a lease which ran from May 1, 2015 to May 31, 2016. Petitioner rented the apartment with Gilbert Pettingell; petitioner and Mr. Pettingell were jointly and severally liable under the lease. Monthly rent was \$1700.00.
3. Petitioner paid a security deposit of \$850.00 (one half of the \$1700.00 security deposit under the terms of the lease). Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on July 20, 2015 with no prior notice to respondent due to problems in his living situation with Gilbert Pettingell. On July 20, petitioner notified Sheila Jacobs that he had moved out of the apartment.
5. On August 27, 2015, respondent sent a written statement to petitioner's forwarding address, by certified mail, in conformance with ordinance requirements. Said statement informed petitioner that

\$637.50 was being withheld from the deposit for unpaid rent. The amount of the security deposit returned to petitioner was \$213.50.

6. Interest in the amount of \$1.00 was credited to the deposit.

7. Both parties testified concerning the \$637.50 deduction for unpaid rent. Petitioner paid rent through the end of July, but did not pay any rent after that. Petitioner did not want to sublet his room in the apartment, but wanted the lease agreement to be terminated. Therefore, a new tenant was found for the apartment, and a new lease began on August 21, 2015. Respondent withheld \$637.50 of petitioner's deposit for the 3 weeks in August that he did not pay rent.

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 mailed. 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 and proper notice was provided in this instance.

11. Based on the evidence, the Hearing Officers conclude the deduction of \$637.50 for unpaid rent was proper. Petitioner moved out of the apartment with no prior notice to respondent. A new tenant was found on August 21, 2015 and a new lease executed. It was proper to withhold a portion of petitioner's deposit for unpaid rent for August, 2015.

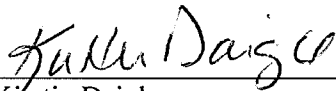
ORDER

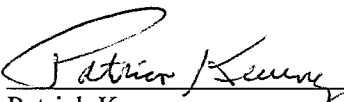
Accordingly, it is hereby ORDERED:

12. Petitioner Patrick Crowley's request for relief is DENIED.

DATED at Burlington, Vermont this 16th day of November, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Hearing Officer


Patrick Kearney
Hearing Officer



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 "Amended 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 1/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Kelsey Miller
Lyndsay Kelsey
August Koch
Caitlin Houlihan
Chris Khamnei

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

**In re: Request for Hearing of KELSEY)
MILLER, AUGUST KOCH, LYND SAY)
KELSEY and CAITLIN HOULIHAN) CITY OF BURLINGTON
Regarding Withholding of) HOUSING BOARD OF REVIEW
Security Deposit by CHRIS KHAMNEI)
for Rental Unit at 395 College St, Apt. 2)**

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on November 2, 2015. For purposes of expedition Board Members Kirstin Daigle and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter. Petitioners Kelsey Miller, August Koch, Lyndsay Kelsey and Caitlin Houlihan were present and testified. Respondent Chris Khamnei was also present and testified. Appearing and testifying as witnesses were David McGee, Bill Ward and Patti Wehman.

The Board issued their decision on November 16, 2015. However, it was brought to the attention of the Board that there was an error in the Findings and Order of November 16. Specifically, the amount of the deposit was \$800.00 per room, not person. Consequently, the amount ordered returned to the tenants was incorrect. Therefore, in order to correct the error, the Board is issuing this Amended Findings of Fact, Conclusions of Law, and Order.

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 Chris Khamnei is the owner of a rental unit, 395 College Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. David McGee is the property manager.
2. Petitioners Kelsey Miller, August Koch, Lyndsay Kelsey and Caitlin Houlihan moved into the rental unit on June 1, 2015 under the terms of a written sublease agreement. Monthly rent was \$800.00 per room with rent payable to respondent.

3. Petitioners paid a security deposit of \$800.00 per room to respondent. Petitioners Kelsey Miller and Lyndsay Kelsey each paid \$800.00 to respondent for a deposit. Petitioners August Koch and Caitlin Houlihan shared a room so they paid \$400.00 each (a total of \$800.00 for the room) to respondent for a deposit. 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 August 22, 2015.

5. On August 31, 2015, respondent sent a written statement to petitioners informing them that their deposits were being withheld for damages and lost rent. Interest was not credited to the deposits.

6. The basis of respondent's withholding of the deposits was his allegation that unreported damage led to the permanent tenants terminating their lease with respondent. The permanent tenants did not move into the apartment because of the condition of it. At issue was mold and water damage in the bathroom which respondent claimed was not reported by petitioners. However, in an email sent to David McGee in June 2015, Kelsey Miller reported a leak coming up from the floor of the bathroom; in addition, she requested instructions on how to use the dehumidifier located in the basement. (The kitchen, bathroom, a bedroom and laundry room are located in the basement of the apartment.) Respondent denied that any leaks were coming up through the floor, but explained them as being caused by a window left open in the basement bedroom. During the time petitioners lived in the apartment, the basement bedroom was locked and they did not have access to it.

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 mailed. 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 provided.

10. Based on the evidence, the Hearing Officers conclude that the withholding of petitioners' deposits was not proper. Respondent is holding petitioners responsible for the failure of the permanent tenants to move into the apartment because of the condition of it. However, petitioners reported the leak in the bathroom to respondent. To the extent respondent blames the leak on an open window in the basement bedroom, petitioners are not responsible for that situation as they did not have access to that bedroom during their tenancy and had no way of knowing whether or not there was an open window in that bedroom.

ORDER

Accordingly, it is hereby ORDERED:

11. Petitioners Kelsey Miller and Lyndsay Kelsey are entitled to recover from respondent Chris Khamnei the following amounts:

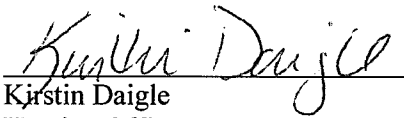
- a) \$800.00 each – the principal amount of the security deposit; and
- b) \$0.005 per day on each deposit from June 1, 2015 until such date as the amount improperly withheld is returned to them.

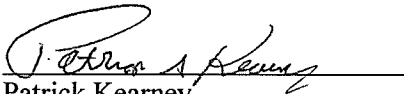
12. Petitioners August Koch and Caitlin Houlihan are entitled to recover from respondent Chris Khamnei the following amounts:

- a) \$400.00 each – the principal amount of the security deposit; and
- b) \$0.003 per day on each deposit from June 1, 2015 until such date as the amount improperly withheld is returned to them.

DATED at Burlington, Vermont this 20th day of January, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Hearing Officer


Patrick Kearney
Hearing Officer