

BURLINGTON HOUSING BOARD OF REVIEW
Monday, November 1, 2021, 7:00 p.m.
PUBLIC HEARING NOTICE

Physical location: Sharon Bushor Conference Room, City Hall, 1st Floor, Burlington, VT

Zoom: <https://us02web.zoom.us/j/82382561654>

Webinar ID: 823 8256 1654

Telephone: US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799
or +1 669 900 6833 or +1 253 215 8782

International numbers available: <https://us02web.zoom.us/j/kc7DqutFv>

AGENDA

1. Gordon Goldsmith (tenant); Michael Wells (landlord) (security deposit case) re: 15 Mill Street
2. Sarah Doe (tenant); Dan and Holly Trahan (landlord) (security deposit case) re: 120 Colchester Ave, Apt. 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 11/12/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Gordon Goldsmith
Marie Kingsley (for landlord)

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

**In re: Request for Hearing of GORDON)
 GOLDSMITH Regarding Withholding of) Security Deposit Appeal
 Security Deposit by MICHAEL WELLS)
 for Rental Unit at 15 Mill Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on November 1, 2021. Board Chair Josh O'Hara presided. Board Member Charlie Gliserman was also present; Board Members Evan Litwin and Betsy McGavisk appeared remotely. Petitioner Gordon Goldsmith was present and testified. Respondent Michael Wells was represented at the hearing by Marie Kinglsey who appeared and testified remotely.

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 Michael Wells is the owner of a rental unit, 15 Mill Street, in the City of Burlington which is the subject of these proceedings. Marie Kingsley manages the property.
2. Petitioner Gordon Goldsmith moved into the rental unit on December 19, 2018 under the terms of a written lease.
3. Petitioner paid a security deposit of \$630.00 to respondent. 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 August 31, 2021.
5. Marie Kingsley sent an itemized list of deductions dated September 1, 2021 to petitioner at the address of the rental unit because petitioner had not provided a forwarding address to her. Said statement itemized deductions totaling \$1204.84. None of the deposit was

returned and interest was not credited to the deposit. In addition, the itemized list of deductions did not include notice to petitioner of his right to dispute the withholding of the deposit before this Board.

6. Petitioner alleged the deposit was willfully withheld by respondent on the basis that the deposit was not returned and he did not receive notice of his appeal rights. Marie Kingsley manages 2 properties in Burlington for just over 1 year. Ms. Kingsley was unaware of the requirement to include petitioner's appeal rights in the notice of withholding.

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding

address is provided. 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.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. Respondent's statement of withholding did not include notice of petitioner's right to appeal to this Board. Consequently, the Board concludes respondent forfeited the right to withhold the deposit.

11. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to return his security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Petitioner argued that the deposit was willfully withheld because it was not returned and the statement of withholding

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

did not include notice of right to appeal to this Board. Marie Kingsley manages two properties in Burlington and has only been doing so for over a year. She was unaware of the notice requirement. The Board concludes the withholding of the deposit was not willful.

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. Petitioner Gordon Goldsmith is entitled to recover from respondent Michael Wells the following amounts:

a) \$630.00 of the principal amount of the security deposit improperly withheld after September 14, 2021;

b) Interest in the amount of \$4.33 on the entire deposit for the period December 18, 2018 to September 14, 2021; and

c) Additional interest of \$0.004 per day from September 15, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 12th day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin