

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 19, 2020

7:00 p.m.

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

Please use the link below to join the webinar:

<https://us02web.zoom.us/j/86376176417?pwd=ZjVST21NbEMrSWx1WlZOb3NndDgxZz09>

Passcode: 410396

Or 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

Webinar ID: 863 7617 6417

Passcode: 410396

International numbers available: <https://us02web.zoom.us/j/86376176417?pwd=ZjVST21NbEMrSWx1WlZOb3NndDgxZz09>

AGENDA

1. Discussion of proposed minimum housing form (continued from 10/5/20 meeting)
2. Matthew Faatz (tenant); WR Villas, LLC (landlord) (security deposit case) re: 258 N. Winooski Ave, Apt. 101
3. Christine Puza, Madeline Stern (tenants); Crosby Hard (landlord) (security deposit case) re: 57A No. Union St
4. Gabrielle & Madalyn DePinto (tenants); Jo Ann Lafayette Holdings (landlord) (security deposit case) re: 2 Allen St
5. Justice Palmer (tenant); Restone Apartments (landlord) (security deposit case) re: 500 So. Prospect St, Apt. 4-21

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.

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 19, 2020

7:00 p.m.

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

Webinar ID: 863 7617 6417

Passcode: 410396

Minutes

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

Staff present: Lisa Jones

1. Discussion of proposed minimum housing form (continued from 10/5/20 meeting)
McGavisk hoped to have someone from Permitting & Inspections present to talk about their process.
O'Hara says thought that was to be an internal discussion. Suggests reaching out to P&I about form.
O'Hara moves to table discussion to next meeting.
Patrick seconds.
All agree.
2. Matthew Faatz (tenant); WR Villas, LLC (landlord) (security deposit case) re: 258 N. Winooski Ave, Apt. 101
Present were: Matthew Faatz, Glenn Von Bernewitz; parties sworn in.
Faatz gives general statement of case.
Von Bernewitz says amount in dispute was returned to tenant – check in mail.
Faatz accepts settlement.
3. Christine Puza, Madeline Stern (tenants); Crosby Hard (landlord) (security deposit case) re: 57A No. Union St
Present were: Christine Puza, Maddy Stern, Crosby Hard; all parties sworn in.
Both parties present evidence and testimony and hearing closed.
4. Gabrielle & Madalyn DePinto (tenants); Jo Ann Lafayette Holdings (landlord) (security deposit case) re: 2 Allen St
Present were: Madalyn DePinto, Rebekah DePinto, Jo Ann Lafayette, Adam Lafayette; all parties were sworn in.
Both parties present evidence and testimony. Hearing concluded.
5. Justice Palmer (tenant); Restone Apartments (landlord) (security deposit case) re: 500 So. Prospect St, Apt. 4-21
Present were: Justice Palmer, Ethan Reardon, Glenn Von Bernewitz, Claire Wulfman, Ocean Verge, Lauren Langlois, Rickie Eanzioe; all parties sworn in.
Palmer makes general opening statement.
Von Bernewitz says amount in dispute returned to Palmer last week. Palmer has yet to receive check, but accepts settlement. Palmer told to contact Board if check isn't received.

Meeting adjourned at 8:20 p.m.

Board deliberates in private.

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

**In re: Request for Hearing of MADALYN and)
GABRIELLE DePINTO Regarding)
Withholding of Security Deposit by JO ANN) Security Deposit Appeal
LAFAYETTE HOLDINGS for Rental Unit at)
2 Allen Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 19, 2020; the hearing was held virtually via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Josh O’Hara, Patrick Murphy and Charlie Gliserman were also present. Petitioner Madalyn DePinto was present and testified. Respondent Jo Ann Lafayette Holdings was represented at the hearing by Jo Ann Lafayette and Adam Lafayette both of whom testified. Also appearing and testifying was Rebekah DePinto.

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 Jo Ann Lafayette Holdings is the owner of a rental unit, 2 Allen Street, in the City of Burlington which is the subject of these proceedings. Jo Ann Lafayette and Adam Lafayette manage the property.
2. Petitioners Madalyn and Gabrielle DePinto moved into the rental unit with a written lease which ran from August 1, 2019 to July 31, 2020. Monthly rent was \$1385.00.
3. Petitioners paid a security deposit of \$1385.00 to respondent. 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 July 31, 2020.

5. On August 12, 2020, respondent sent a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions of \$450.01 from the deposit. Interest was credited to the deposit. Respondent returned \$935.14 of the deposit to petitioners.

6. Petitioners disputed the deduction of \$232.65 for repairs and cleaning. Petitioners argued that most of the repairs (such as holes in the walls) were part of normal wear and tear. However, they did acknowledge being responsible for 2 dents in a bedroom wall and a dent in the living room closet. Petitioners disputed that any cleaning needed to be done. Rebekah DePinto testified that the apartment was clean when petitioners moved out. BTV Cleaning cleaned the apartment; their invoice indicates “cleaning for turnovers”. The bill for \$735 indicates they spent 21 hours cleaning the apartment. With respect to the holes in the walls, Jo Ann Lafayette testified that a few nail holes are normal wear and tear; however, an area with a lot of holes in the walls is beyond normal wear and tear. Jo Ann Lafayette counted 35 holes in the north bedroom’s walls.

7. Petitioners also disputed the \$45 deduction for extra, unbagged trash in the trash barrels. Petitioners put their recycling next to the trash barrels when they moved out, but they did not leave any unbagged garbage in the barrels. Jo Ann Lafayette just assumed petitioners left the unbagged garbage because all the other tenants in the building are long-time residents and they know trash must be bagged.

8. Other deductions from the deposit were not disputed.

9. Petitioners argued that the deposit was willfully withheld because they were charged for cleaning that did not need to be done and for repairs that were part of normal wear and tear. In response, Jo Ann Lafayette testified that petitioners were not charged for all the cleaning, just what was beyond normal wear and tear. With respect to the repairs, Jo Ann Lafayette testified

they were only charged for damages beyond normal wear and tear.

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). Timely notice was provided.

13. Based on the evidence and testimony, the Board concludes that the deduction for cleaning was not proper. Petitioners cleaned the apartment before moving out and the bill for cleaning indicates the cleaning done was just for a turnover.

14. Based on the evidence and testimony, the Board concludes it was proper to deduct the cost to repair the 2 dents in the bedroom wall and the dent in the closet. The deduction for repairs was not itemized separately, but was part of the deduction for cleaning. Therefore, the Board concludes it was reasonable to deduct \$100 (2.5 hours at \$40/hr) from the deposit for repairs.

15. Based on the evidence and testimony, the Board concludes the deduction for extra trash was not proper. Respondent withheld money from petitioner's deposit on the assumption that the trash was left by petitioners. The extra trash cannot be found to be attributable to petitioners when it is based on an assumption only.

16. Petitioners argued that the deposit was willfully withheld. Sec. 18-120 of the Minimum Housing Code provides that if the failure to return a deposit with an itemized statement is willful, the landlord is liable for double the amount wrongfully withheld. Petitioners argued that the fact they were charged for cleaning at all, which in their minds did not need to be done, demonstrated willful withholding. Respondent did not deduct the actual cost to clean, but just a portion of it; Jo Ann Lafayette testified she only withheld money for damages beyond normal wear and tear. The Board concludes there is no evidence to support that the deposit was willfully withheld.

Order

Accordingly, it is hereby ORDERED:

17. Petitioners Madalyn and Gabrielle DePinto are entitled to recover from respondent Jo Ann Lafayette Holdings the following amounts:

a) \$177.65 of the principal amount of the deposit improperly withheld after August 14, 2020; and

b) Additional interest of \$0.001 per day from August 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4th day of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman

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

**In re: Request for Hearing of CHRISTINE)
 PUZA and MADELINE STERN)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by CROSBY HARD for Rental)
 Unit at 57A North Union Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 19, 2020; the hearing was held virtually via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Josh O’Hara, Patrick Murphy and Charlie Gliserman were also present. Petitioners Christine Puza and Madeline Stern were present and testified. Respondent Crosby Hard was also present and 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 Crosby Hard is the owner of a rental unit, 57A North Union Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Christine Puza moved into the rental unit on March 4, 2017 under the terms of a written lease. Petitioners Christine Puza and Madeline Stern had an 18-month written lease which commenced on January 1, 2019. Monthly rent was \$2200.00.
3. Petitioners paid a security deposit of \$2200.00 to respondent. 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 July 1, 2020.
5. On July 13, 2020, respondent sent a statement to petitioners informing them that part

of their deposit was being withheld. Said statement itemized deductions of \$1530 from the deposit. Respondent returned \$670 of the deposit to petitioners. Respondent's statement did not include notice of petitioners' right to dispute the withholding of their deposit to this Board.

6. Interest was not credited to the 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. 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. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. 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:

12. Petitioners Christine Puza and Madeline Stern are entitled to recover from respondent Crosby Hard the following amounts:

- a) \$1530 of the principal amount of the security deposit improperly withheld after July 15, 2020;
- b) Interest of \$17.92 on the entire deposit for the period March 3, 2017 to July 15, 2020;

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

and

c) Additional interest of \$0.01 per day from July 16, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4th day of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman