



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

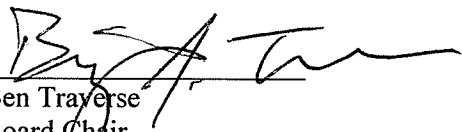
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 11/17/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Trayerse
Board Chair

cc: Anna Bromley & Peter Hipko
David & Maureen Marble

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

**In re: Request for Hearing of PETER HIPKO)
 And ANNA BROMLEY Regarding) CITY OF BURLINGTON
 Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
 DAVID and MAUREEN MARBLE for)
 Rental Unit at 11 Clymer St, Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 19, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Anna Bromley and Peter Hipko were present and testified. Respondent David Marble 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. Respondents David and Maureen Marble are the owners of a rental unit, 11 Clymer Street, Apt. 2, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Anna Bromley and Peter Hipko moved into the rental unit on September 1, 2013 under the terms of a written lease. Monthly rent was \$750.00.
3. Petitioners paid a security deposit of \$750.00 to respondents. 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 May 27, 2015.
5. On June 5, 2015, respondents' property manager sent a statement to petitioners informing them that \$250.00 of the security deposit was being withheld. Petitioners had agreed to the fee in return for early termination of their lease. The statement indicated respondents would send a check for \$500.04 (including \$0.004 in interest) directly to them.

6. On June 23, 2015, respondents' property manager sent a revised statement to petitioners informing them that an additional \$173.33 was being withheld for damage to smoke detectors. Again, the statement indicated that respondents would return \$326.71 of the deposit directly to them. Petitioners received a check sometime after that. Petitioners disputed the deduction of \$173.33.

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. Petitioners vacated the apartment on May 27, 2015. Consequently, respondents were required to return the deposit with a written statement itemizing any deductions by June 10, 2015. Respondent sent 2 statements to petitioners – one on June 5, 2015 and a revised one on June 23, 2015. The June 5 statement was timely, but the June 23 statement was not. As the June 23 statement was not

timely, the Board concludes respondents forfeited the right to withhold any money for the smoke detectors.

ORDER

Accordingly, it is hereby ORDERED:

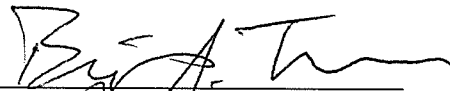
11. Petitioners Anna Bromley and Peter Hipko are entitled to recover from respondents David and Maureen Marble the following amounts:

a) \$173.33 of the principal amount of the security deposit improperly withheld after June 10, 2015; and

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

DATED at Burlington, Vermont this 17th day of November, 2015.

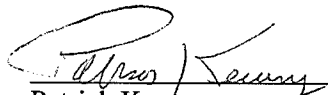
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L. Ecuier


Kirstin Daigle

Loyal Ploof


Patrick Kearney



HOUSING BOARD OF REVIEW

City of Burlington

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CITY OF BURLINGTON

NOTICE OF DECISION

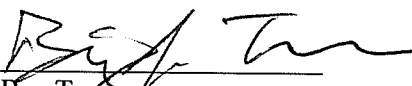
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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: Randy Raymond
Terry Stone

**In re: Request for Hearing of RANDY)
RAYMOND Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by TERRY STONE) HOUSING BOARD OF REVIEW
for Rental Unit at 35 Hayward St, Apt B)**

The above-named hearing came before the Housing Board of Review on October 19, 2015. Board Chair Ben Traverse presided. Board Members Loyal Ploof, Kirstin Daigle, Jason L’Ecuyer and Patrick Kearney were also present. Petitioner Randy Raymond was present and testified. Respondent Terry Stone was also present and testified. Appearing and testifying as witnesses were Eric Friend, Kristine Stone and Jerry Thomas.

FINDINGS OF FACT

- 1

5. Petitioner filed his request for hearing on July 31, 2015. Respondent argued that petitioner did not file his request on time, and therefore, the Board should not hear the case. Petitioner countered that he filed his request within 30 days of receipt of respondent's statement.

CONCLUSIONS OF LAW

6. 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.

7. 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.

8. 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. A tenant, upon receiving notice of the landlord's intent to withhold the deposit, may object and request a hearing before the Burlington Housing Board of Review for a review of the reasonableness of the owner's deductions. Minimum Housing Code Sec. 18-120(e). The request shall be submitted in writing by the tenant within 30 days of receipt of notice of the opportunity to request a hearing or, in the absence of such notice, within 44 days of the date the tenant vacated the apartment. Minimum Housing Code Sec. 18-120(e).

9. Respondent argued that petitioner's request for hearing was not filed on time, and thus, the Board should not hear the case. The Board agrees. Respondent sent notice of the withholding of the deposit on June 12, 2015. Petitioner was notified by the post office that he had mail from respondent, but waited almost a month to pick it up. Subsequently, petitioner filed his request for hearing on July 31, 2015. Petitioner argues that his request was filed on time because it was filed within 30 days of receipt of respondent's statement. The Board disagrees. Petitioner had 44 days to file his request for hearing. In

the absence of receiving notice from a landlord within the 14-day period, a tenant has 44 days to file a request for hearing. Petitioner did not receive notice within the 14-day period (as a result of his failure to pick up his mail) so he had 44 days from the date he moved out to file his request. To interpret the ordinance any other way would mean that a tenant could extend his filing deadline by deliberately neglecting to pick up his mail. The Board concludes this was not the intent of the ordinance.

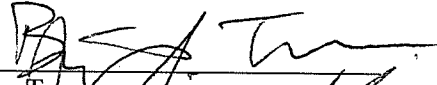
ORDER

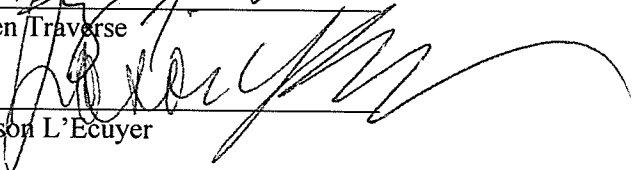
Accordingly, it is hereby ORDERED:

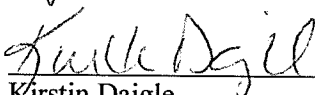
10. Petitioner Randy Raymond's request for relief is DENIED as his request for hearing was not filed in a timely manner.

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

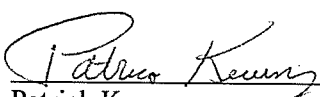
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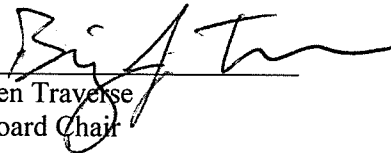
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DATED 11/16/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Gail Couillard
John O'Brien

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

**In re: Request for Hearing of GAIL)
COUILLARD Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JOHN O'BRIEN) HOUSING BOARD OF REVIEW
for Rental Unit at 26 Wells Street, D)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 19, 2015. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Loyal Ploof, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Gail Couillard was present and testified. Respondent John O'Brien, although notified of the hearing and the opportunity to be heard, was not present. Appearing and testifying as a witness was Debra Stough.

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 John O'Brien is the owner of a rental unit, 26 Wells St, Apt. D, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Gail Couillard moved into the rental unit on or about December 21, 2000 under the terms of a written lease. Petitioner paid a security deposit in the amount of \$500.00 to respondent. Petitioner was to receive back her security deposit at the end of the tenancy minus any amounts withheld for damages.
3. Petitioner vacated the apartment on July 1, 2015.
4. Respondent has not returned the deposit and has not sent petitioner a statement itemizing any deductions from the deposit. When petitioner asked respondent about the return of her deposit money, respondent indicated he could not return her deposit because he did not have any money. Although petitioner agreed to an extension of time for the return of her deposit to August 1, respondent still has not returned the deposit to her.

CONCLUSIONS OF LAW

5. 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.

6. 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.

7. 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. 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). If the failure to return the deposit with a statement is willful, the landlord shall be liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e)

8. Respondent has not returned the deposit and has not sent a statement itemizing any deductions from the deposit. In addition, petitioner agreed to an extension of time for him to return the deposit and he still has not done so. The Board concludes that respondent's failure to return the deposit is willful, and consequently, petitioner is entitled to double the amount wrongfully withheld. The amount wrongfully withheld was \$500.00 so that petitioner is entitled to an additional \$500.00.

9. 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:

10. Petitioner Gail Couillard is entitled to recover from respondent John O'Brien the following amounts:

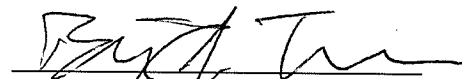
a) \$1,000.00, the amount of the security deposit plus double the amount willfully withheld, after July 15, 2015;

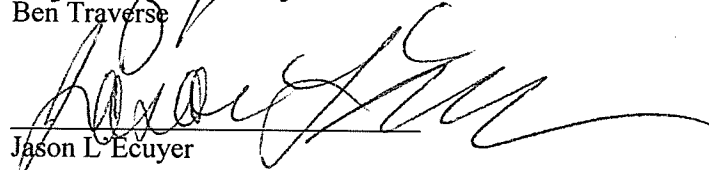
b) Interest in the amount of \$18.28 on the entire deposit for the period December 21, 2000 to July 15, 2015; and

c) Additional interest of \$0.003 per day from July 16, 2015 until such date as the amount wrongfully withheld is returned to petitioner.

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

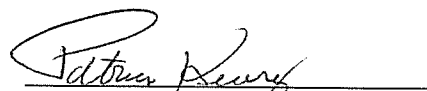
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