

BURLINGTON HOUSING BOARD OF REVIEW
Monday, October 18, 2021, 7:00 p.m.
NOTICE OF PUBLIC MEETING

Physical location: Dept. of Public Works, 645 Pine St, Burlington, Front Conference Room

Zoom: <https://us02web.zoom.us/j/83472475799>

Webinar ID: 834 7247 5799

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/u/kiCtWN6xd>

AGENDA

1. Jill Smith & Johnathan Patterson (tenants); William Nulty (landlord) (security deposit case) re: 262 Pearl St, Apt. 3 (postponed from meeting of 9/24/21)
2. Ceili Gelsinon (tenant); Sonam Chopel (landlord) (security deposit case) re: 40 Ward St
3. Eve Tyrrell-Berinati (tenant); Nicole Senecal (landlord) (security deposit case) re: 451 Appletree Point Rd

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.

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Minutes

Board Members present: Josh O'Hara, Evan Litwin (remotely) and Charlie Gliserman (remotely)

Staff present: Lisa Jones

1. Jill Smith & Johnathan Patterson (tenants); William Nulty (landlord) (security deposit case) re: 262 Pearl St, Apt. 3 (postponed from meeting of 9/24/21)
Present (all remotely) were Jill Smith, Johnathan Patterson and Dean Gallagher. The parties were sworn in. Both parties presented their evidence and testimony. Hearing was concluded.
2. Ceili Gelsinon (tenant); Sonam Chopel (landlord) (security deposit case) re: 40 Ward St
Ceili Gelsinon withdrew her request for hearing. Case was closed.
3. Eve Tyrell-Berinati (tenant); Nicole Senecal (landlord) (security deposit case) re: 451 Appletree Point Rd
Present were Eve Tyrell-Berinati (remotely), Nicole Senecal and Raeann Lewandowski. The parties were sworn in. Both parties presented their evidence and testimony. Hearing was concluded.

Meeting was adjourned at 7:25 p.m.

Board deliberated in private.



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 11/2/01

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Jill Smith & Johnathan Patterson
William Nulty

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

**In re: Request for Hearing of JILL SMITH and)
JOHNATHAN PATTERSON Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
WILLIAM NULTY for Rental Unit at)
262 Pearl Street, Apt. 3)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 18, 2021. Board Chair Josh O’Hara presided. Board Members Evan Litwin and Charlie Gliserman appeared remotely. Petitioners Jill Smith and Johnathan Patterson appeared and testified remotely. Respondent William Nulty was represented at the hearing by Dean Gallagher 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 William Nulty is the owner of a rental unit, 262 Pearl Street, Apt. 3, in the City of Burlington which is the subject of these proceedings. Delbert “Dean” Gallagher manages the property for his father-in-law.
2. Petitioners Jill Smith and Johnathan Patterson moved into the rental unit under the terms of a written lease. Monthly rent was \$1550.00.
3. Petitioners paid a security deposit of \$1550.00 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 June 15, 2021.

5. Dean Gallagher asked petitioners on several occasions for a forwarding address so that he could return deposit money to them. He understood petitioners had not filled out a forwarding order for the post office and he was afraid to return the deposit to the address of the rental unit, fearing they would not receive it. Petitioners were moving out of state and were unsure of their new mailing address. Consequently, they requested that Dean Gallagher return the deposit through Venmo. In a July 2, 2021 text, Mr. Gallagher indicated using Venmo would not be a problem, but told them he was still waiting for an estimate to repair the flooring; in addition, Dean Gallagher said he would send the receipt for trash removal. When Dean Gallagher realized he would not be able to Venmo money to petitioners, he asked them again for a forwarding address.

6. On July 15, 2021, Dean Gallagher received petitioner's mailing address. On July 20, 2021, Mr. Gallagher returned \$651.00 of the deposit to petitioners. Mr. Gallagher did not provide an itemized list of deductions from the deposit or notice of petitioners' opportunity to request a hearing before this Board to dispute the withholding. In addition, interest was not credited to the deposit.

7. Petitioners argued that respondent willfully withheld the deposit on the basis that it took him 5 weeks to return any deposit money to them. In addition, it took Dean Gallagher a couple of weeks to respond to their request to have money returned via Venmo. At the move-out inspection, Dean Gallagher pointed out the floor damage and the extra garbage in the dumpster to petitioners; because he discussed the damage with petitioners he did not think he needed to provide a list of itemized deductions. Mr. Gallagher was unaware of the requirement to provide notice of petitioners' appeal rights to them. Once Mr. Gallagher had a forwarding address for petitioners he sent them a check.

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 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).

11. 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. The Board concludes respondent forfeited the deposit by failing to provide an itemized list of deductions, by failing to return the deposit or send notice within 14 days and by failing to provide notice of petitioners' appeal rights.

12. 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). Petitioners have also moved for double damages, alleging respondent's failure to return the 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). Dean Gallagher wrongfully believed he did not need to provide a written statement itemizing the deductions because he pointed out the damage to petitioners during the move-out inspection. Mr. Gallagher was unaware of the requirement to provide notice of petitioners' appeal rights. Although respondent and Mr. Gallagher did not provide the required notice and did not return the deposit in a timely manner, the Board concludes the failure to do so was not willful.

13. 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

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

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:

14. Petitioners Jill Smith and Johnathan Patterson are entitled to recover from respondent William Nulty the following amounts:

- a) \$899.00 of the principal amount of the deposit improperly withheld after June 29, 2021;
- b) Interest in the amount of \$7.52 on the entire deposit for the period July 20, 2019 to June 29, 2021; and
- c) Additional interest of \$0.06 per day from June 30, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 22nd day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman



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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 11/2/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Eve Tyrrell-Berinati
Nicole Senecal

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

**In re: Request for Hearing of EVE TYRRELL-)
BERINATI Regarding Withholding of) Security Deposit Appeal
Security Deposit by NICOLE SENEAL)
for Rental Unit at 451 Appletree Point Rd)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 18, 2021. Board Chair Josh O'Hara presided. Board Members Evan Litwin and Charlie Gliserman appeared remotely. Petitioner Eve Tyrrell-Berinati appeared remotely and testified. Respondent Nicole Senecal was also present and testified. Also present was Raeann Lewandowski.

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 Nicole Senecal is the owner of a rental unit, 451 Appletree Point Road, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Eve Tyrrell-Berinati moved into the rental unit with a written lease which ran from July 1, 2020 to March 31, 2021; the lease was extended to July 31, 2021. Monthly rent was \$2,000.00.
3. Petitioner paid a security deposit of \$2,000.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on August 1, 2021.
5. On August 3, 2021, Raeann Lewandowski (responding to an email from petitioner) sent an email to petitioner indicating \$350.00 was being withheld from the deposit to repair grout missing in tiled areas in the kitchen and bathroom. The email did not inform petitioner of her

right to dispute the withholding of her deposit. In addition, interest was not credited to the deposit. Respondent returned \$1650.00 of the deposit to petitioner via PayPal.

6. Petitioner disputed the withholding on the basis that respondent's notice was not proper and that any damage to the grout, if it existed, was part of normal wear and tear. Petitioner also argued that the deposit was willfully withheld. The basis of her argument on willfulness is that respondent is a landlord and should know the law. Respondent testified she was unaware of her responsibility to inform a tenant of their opportunity to dispute the withholding of the deposit by request a hearing before this Board within 30 days of notice of withholding. Respondent believed the email to petitioner about the deposit was sufficient and she then promptly returned the deposit (minus the amount for repairs) via PayPal.

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 did not inform petitioner of her right to request a hearing to dispute the withholding of her deposit. Therefore, the Board concludes respondent forfeited the right to withhold any part of 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 alleged that the deposit was willfully withheld on the basis of respondent's failure to include notice of her appeal rights in the email sent to her on August 3, 2021. As the Superior Court has recently held, "willfully" for purposes

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

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). Respondent returned \$1650.00 of the deposit in a timely manner and informed petitioner why \$350 was being withheld (also in a timely manner). Respondent was unaware of the ordinance provision regarding her responsibility to provide notice of a tenant's right to appeal when a deposit is withheld; she was not being obstinate or indifferent to the law – she did not know the law. Therefore, Board concludes the deposit was not willfully withheld.

12. 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:

13. Petitioner Eve Tyrrell-Berinati is entitled to recover from respondent Nicole Senecal the following amounts:

- a) \$350.00 of the principal amount of the deposit improperly withheld after August 15, 2021;
- b) Interest in the amount of \$5.46 on the entire deposit for the period July 1, 2020 through August 15, 2021; and
- c) Additional interest of \$0.002 per day from August 16, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 22nd day of November, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman