

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 17, 2022

7:00 p.m.

The meeting will be REMOTE ONLY. You can join the meeting via Zoom:

<https://zoom.us/j/92160327576>

Or One tap mobile:

US: +19292056099,,92160327576# or +13017158592,,92160327576#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931
or +1 669 900 6833 or +1 719 359 4580 or +1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053
564 217 2000 or +1 669 444 9171

Webinar ID: 921 6032 7576

International numbers available: <https://zoom.us/j/92160327576>

AGENDA

1. Rick Bove (property owner) (code case) re: 445 Colchester Avenue
2. Cady Dubuque (tenant); Mitchel Richardson (landlord) (security deposit case) re: 441 Shelb
Rd, Unit 6

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: Betsy McGavisk, Evan Litwin, Charlie Gliserman, Olivia Taylor and Josh Wronski

Staff present: Lisa Jones

Meeting called to order at 7:05 p.m.

1. Rick Bove (property owner) (code case) re: 445 Colchester Avenue
Rick Bove withdrew his request for hearing. No hearing
2. Cady Dubuque (tenant); Mitchel Richardson (landlord) (security deposit case) re: 441 Shelburne Rd, Unit 6
Present were: Cady Dubuque, Reilly Dubuque, Mitchel Richardson and Marina Cook. All parties were sworn in. Both parties presented their evidence and testimony. The hearing was concluded.

Meeting adjourned at approximately 7:45 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 11/7/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Cady Dubuque
Mitchel Richardson

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

**In re: Request for Hearing of CADY DUBUQUE)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by MITCHEL RICHARDSON d/b/a)
 441 Shelburne Road LLC for Rental Unit)
 At 441 Shelburne Road, Unit 6)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 17, 2022; the meeting was held remotely via Zoom. Board Chair Betsy McGavisk presided. Board Members Evan Litwin, Charlie Gliserman, Olivia Taylor and Josh Wronski were also present. Petitioner Cady Dubuque was present and testified. Respondent Mitchel Richardson was also present and testified. Also appearing and testifying as witnesses were Marina Cook and Riley Dubuque.

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 Mitchel Richardson, d/b/a 441 Shelburne Road LLC, is the owner of a rental unit, 441 Shelburne Road, Unit 6, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Cady Dubuque moved into the rental unit on July 1, 2021 under the terms of a written lease. Monthly rent was \$1480.00.
3. Petitioner paid a security deposit of \$1480.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. The parties disputed the vacate date. Petitioner testified that she vacated the unit on August 27, 2022 and texted respondent and his partner, Tonya Poutry (with whom she had been

communicating about the unit throughout the tenancy), at 5:02 p.m. saying that she would be out of the apartment within the hour. In addition, on August 28 2022, Tonya Prouty texted petitioner asking her about the keys and petitioner responded that she left them in a kitchen drawer. Respondent testified that he wasn't aware that petitioner was vacating prior to September 1. However, in an email sent by Tonya Prouty to petitioner and Marina Cook (the tenant moving into petitioner's vacated unit) on August 19, Ms. Prouty confirms that petitioner is vacating on August 28 at which time Marina Cook will move from her unit into petitioner's vacated unit. In addition, a move-out inspection of petitioner's apartment is confirmed for August 28. Although the email was sent by Tonya Prouty, it was signed Mitchel Richardson. Lastly, Marina Cook and respondent inspected the apartment on August 28. The Board finds that petitioner vacated the unit on August 28, 2022.

5. On September 12, 2022, petitioner texted respondent and asked when she could expect to receive her security deposit. On September 13, respondent texted petitioner and told her that repairs to the wall were not finished until September 7 and he would figure out the deposit by the end of the week. Petitioner responded and informed respondent that under Vermont law he was required to return the deposit with a statement within 14 days of the vacate date or he forfeited the deposit. Respondent texted back saying, "I will have my attorney take over from here."

6. On September 14, 2022, respondent texted petitioner informing her that part of the deposit was being returned via Venmo; respondent informed petitioner that \$600.00 was being withheld from the deposit - \$400 for 8 days of rent and \$200 for painting. Respondent's text did not inform petitioner of her opportunity to request a hearing before this Board. No other

documents or statements were submitted into evidence that indicated respondent gave petitioner written notice of her appeal rights.

7. Interest was not credited to the deposit.

8. Petitioner argued that respondent willfully withheld the deposit and requested that the Board order respondent to return double the amount withheld. The basis of petitioner's argument is that Tonya Prouty indicated to her that the deposit would be returned; in addition, Ms. Prouty indicated to petitioner that she was aware of the need to return the deposit within 14 days. Specifically, Ms. Prouty's text message to petitioner states: "Mitchel has been haying. When he does the inspection, it will be sent via Venmo within 14 days of lease expiration." Petitioner believed that respondent never intended to return the deposit. Respondent argued that he made it clear to petitioner that she was responsible for her obligations under the lease until Marina Cook was able to move into the apartment. According to respondent, the apartment was not ready for a new tenant until September 9. Thus, respondent argued that the return of the deposit was timely because it was sent within 14 days of the termination of petitioner's lease (ie, the date the apartment was ready for a new tenant to move into it).

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 landlord discovers that the tenant vacated or abandoned the rental unit, or the date the tenant vacated the unit provided the landlord received notice from the tenant of the date, 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).

12. 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.

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

13. Respondent argued that the return of the deposit and text itemizing the deductions was timely. Respondent argued that 14 days starts after the termination of the lease which, in this case, was September 8 according to him. Respondent's argument is wrong. City ordinance specifically states that a landlord has 14 days from the date the tenant vacates the rental unit to return the deposit and provide an itemized list of deductions provided the tenant notifies the landlord of the vacate date. Minimum Housing Code Sec. 18-120(c). On August 27, 2022, petitioner texted respondent and Tonya Prouty informing them that she would be out of the unit by early evening. On August 28, petitioner texted Tonya Prouty to let her know where she left the keys to the apartment. Respondent and Marina Cook inspected the apartment on August 28, 2022. At the latest, respondent knew petitioner was out of the apartment on August 28 when he inspected the apartment. Consequently, he had 14 days from that date to return the deposit with an itemized list of deductions from the deposit. Respondent returned the deposit and texted petitioner about the deductions on September 14, 2022 – 17 days after respondent discovered that petitioner had vacated the unit. Respondent's return of the deposit and statement of deductions was not timely. In addition, respondent did not provide petitioner with a statement of her appeal rights. Therefore, the Board concludes that respondent forfeited the deposit.

14. 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). The basis of petitioner's

argument is that Tonya Prouty, according to petitioner, indicated the deposit would be returned and knew they had 14 days in which to return it. Petitioner also believed respondent never intended to return the deposit. However, the text message between petitioner and Tonya Prouty indicated respondent needed to inspect the apartment before the deposit would be returned; Ms. Prouty also indicated that they had within 14 days of lease expiration to return the deposit. Respondent's interpretation of the ordinance was incorrect, but it was not his intention to violate the ordinance. Based on the evidence and testimony, the Board concludes that the deposit was not willfully withheld.

15. 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:

16. Petitioner Cady Dubuque is entitled to recover from respondent Mitchel Richardson d/b/a 441 Shelburne Road LLC the following amounts:

a) \$600.00 of the principal amount of the security deposit improperly withheld after September 11, 2022;

b) Interest in the amount of \$4.43 on the entire deposit for the period July 1, 2021 through September 11, 2022;

c) Additional interest of \$0.004 per day from September 12, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 7th day of November, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Olivia Taylor
Olivia Taylor

/s/ Josh Wronski
Josh Wronski