



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 11/7/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Vincent Bassett
Kim Ianelli
William Ward
Patricia Wehman

**In re: Request for Hearing of VINCENT)
BASSETT Regarding the Rental) CITY OF BURLINGTON
Property at 20-22 Decatur Street) HOUSING BOARD OF REVIEW**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Petitioner Vincent Bassett is the owner of property, 20-22 Decatur Street, in the City of Burlington which is the subject of these proceedings; there are 3 rental units at the property. Will Howard manages the property.

2. On September 12, 2018, Minimum Housing Inspector Kim Ianelli conducted an inspection of the property and issued an order. In that Order, Ms. Ianelli noted the lack of a window opening to the outdoors in one of the bedrooms at 22 Decatur Street.

3. The Minimum Housing Code requires that each habitable room have 1 window opening to the outdoors that can be opened; the minimum ventilation of the opened window area must be 4 percent of the floor area. Minimum Housing Code Sec. 18-84(a). In this case, the window in the bedroom identified as bedroom 2 opens to an enclosed, 3 season porch. The purpose of the ordinance is to ensure that all habitable rooms have sufficient lighting and ventilation so as to not endanger health and safety.

4. Petitioner requested a variance from the ordinance requirement related to the window.

Petitioner purchased the property in 2016 and the 3 rental units were in existence at that time. The porch was also enclosed at that time. Past inspections did not note a problem with the window. Opening the porch would result in the loss of that space for storage and the loss of an additional usable space for the tenant. Will Howard was unsure of the cost to open the porch or to remove it. He was also unsure of what effect removing the porch would have on the building.

5. The Code Enforcement Office did not oppose granting a variance with certain conditions to ensure that there was sufficient ventilation in the bedroom. (The Code Enforcement Office believed there was sufficient light in the bedroom.)

CONCLUSIONS OF LAW

6. To grant petitioner a variance from the strict application of the Code, the Board must determine that

by reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued...

Minimum Housing Code, Sec. 18-42(c). Petitioner has met this standard.

7. Once this standard is met, the Board's discretion to grant a variance is further circumscribed by another provision of Section 18-42(c):

[P]rovided, however, that the Board shall have the power to vary from the strict application of the requirements of this chapter only to the least extent necessary to relieve the difficulties or hardships involved, and only if such variance will not cause substantial detriment to the health, safety, morals and general welfare of the persons residing in the dwelling or dwelling units involved or to the general public and will not cause substantial impairment of the intent and purpose of this chapter....

See also, 24 V.S.A. Sec. 5005(c)(2). The Board concludes this standard can be met if the conditions enumerated below are met.

ORDER

Accordingly, it is hereby ORDERED:

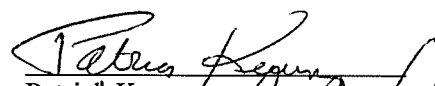
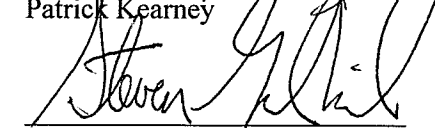
8. The request of petitioner Vincent Bassett for a variance from Section 18-84 regarding the window in bedroom 2 of 22 Decatur Street is GRANTED, subject to the following conditions:

- a) The openable portion of the bedroom window and the porch window shall be equipped with a window screen.
- b) The use of the porch for storage shall be limited in order to prevent either window from being blocked in a manner that prevents ventilation to the bedroom.
- c) Future leases for the unit must include notice to the tenant that a variance was granted for the bedroom.
- d) To ensure that any subsequent purchaser of the property has notice of the conditions placed by this Board in granting a variance, petitioner shall cause a copy of these Findings of Fact, Conclusions of Law, and Order to be recorded and indexed in the Land Records of the City of Burlington.

Dated at Burlington, Vermont this 7th day of November, 2018.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney

Steven Goodkind



HOUSING BOARD OF REVIEW

City of Burlington

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DATED 11/7/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Jonathan Allyn & Nathan Sloma
N. Paul Loomba

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

**In re: Request for Hearing of JONATHAN)
ALLYN and NATHAN SLOMA) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by N. PAUL LOOMBA for)
Rental Unit at 201 Park Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 15, 2018. Board Vice Chair Josh O'Hara presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioners Jonathan Allyn and Nathan Sloma were present and testified. Respondent N. Paul Loomba testified via telephone conference call. Also appearing and testifying as a witness was Tom Rotella.

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 N. Paul Loomba is the owner of a rental unit, 201 Park Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Jonathan Allyn and Nathan Sloma moved into the rental unit under the terms of a written lease which ran from July 1, 2017 to June 30, 2018. Monthly rent was \$650.00 per tenant. Petitioners had another roommate who is not a party to this dispute.
3. Petitioners each paid a security deposit of \$650.00 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 30, 2018.
5. Beginning on August 2, 2018, petitioners emailed respondent about the return of their deposit. Each time petitioners inquired about the deposit, respondent indicated he was still gathering the invoices for the damages. On August 12, 2018, respondent sent an email to petitioners with an accounting of the

damages and deductions from the deposit. Respondent's email did not inform petitioners of their right to appeal the withholding of the deposit to this Board. Respondent returned \$372.90 to each tenant.

6. Petitioners disputed the withholding of the deposit and the timeliness of respondent's notice to them. Respondent testified that an itemized statement wasn't provided until August 12 because he did not have all the invoices for the damages.

7. Interest was not credited to the deposit.

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. 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. In this case, respondent failed to comply with the notice requirements by failing to include petitioners' appeal rights in the statement and by failing to return the deposit with an itemized list of deductions within 14 days. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

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:

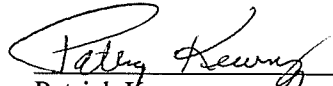
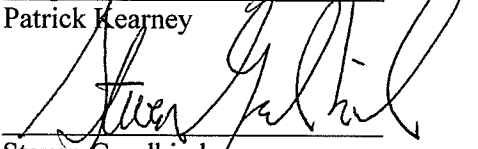
13. Petitioners Jonathan Allyn and Nathan Sloma are **each** entitled to recover from respondent N. Paul Looma the following amounts:

- a) \$277.10 of the principal amount of the deposit improperly withheld after July 14, 2018;
- b) Interest in the amount of \$2.38 on the entire deposit for the period July 1, 2017 to July 14, 2018; and
- c) Additional interest of \$0.002 per day from July 15, 2018 until such date as the amount improperly withheld is returned to each petitioner.

Dated at Burlington, Vermont this 7th day of November, 2018.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara
Patrick Kearney
Steven Goodkind



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DATED 11/7/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Jill Smith & Johnathan Patterson
32-38 Grant St LLC, c/o Hinsdale Properties

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

In re: Request for Hearing of JILL SMITH)
And JOHNATHAN PATTERSON) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by 32-38 GRANT ST LLC for)
Rental Unit at 36 ½ Grant Street)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 15, 2018. Board Vice Chair Josh O'Hara presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Jill Smith was present and testified. Respondent 32-38 Grant St LLC was represented at the hearing by Laura Hinsdale, Jacob Hinsdale and Will Howard from Hinsdale Properties.

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 32-38 Grant St LLC is the owner of a rental unit, 36 ½ Grant Street, in the City of Burlington which is the subject of these proceedings. Hinsdale Properties manages the property.
2. Petitioners Jill Smith and Johnathan Patterson moved into the rental unit under the terms of a written lease which ran from May 30, 2017 to August 23, 2018. Monthly rent was \$1400.00.
3. Petitioners paid a security deposit of \$1400.00 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 August 23, 2018.
5. On August 28, 2018, respondent sent petitioners a written statement in accordance with ordinance requirements. Said statement itemized damages totaling \$380.47. Interest in the amount of \$0.35 was credited to the deposit.
6. Both parties testified concerning kitchen and oven cleaning which appeared as a \$120 deduction on the itemized statement. The oven and appliances needed some cleaning and the walls, ceilings and cabinets needed to be washed due to grease and smoke residue on them. A total of 3 hours

was spent cleaning the kitchen. Petitioner testified that she did not believe 3 hours of cleaning was required; she believed the apartment was left in decent condition. Petitioner acknowledged that underneath the refrigerator and stove needed to be cleaned.

7. Both parties testified with respect to cleaning grease from the stairs and concrete which appeared as a \$40.00 deduction on the itemized statement. The exterior stairs and concrete were pressure washed due to grease on them from petitioner's grill. The grease stains occurred just after petitioner moved out and moved the grill from the porch and down the stairs. Petitioner testified the stairs were used by others so did not believe she caused all the damage.

8. Both parties testified with respect to the bedroom wall repair which appeared as a \$50.00 deduction on the itemized statement. There were tack and pin holes all over the walls in one of the bedrooms which needed to be spackled, sanded and painted to repair the damage. It took 1 hour of time to repair the damage. Petitioner did not deny that there were tack and pin holes, but claimed she spackled and sanded them.

9. Both parties testified with respect to cleaning the bedroom and bathroom which appeared as an \$80.00 deduction on the itemized statement. The walls in the bathroom and bedroom needed to be washed due to smoke residue on them. The bathroom needed to be wiped down and the floors needed to be cleaned. Petitioner testified she mopped, cleaned and wiped down the bathroom.

10. Petitioner did not dispute the deduction of \$50.00 to repair 2 screens.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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). Proper notice was provided.

14. Based on the evidence and testimony, the Board concludes all the deductions itemized on the written statement were reasonable. The repairs and cleaning done by respondent were a result of damages attributed to petitioner.

ORDER

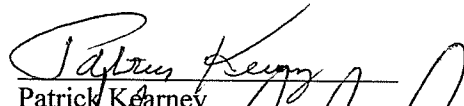
Accordingly, it is hereby ORDERED:

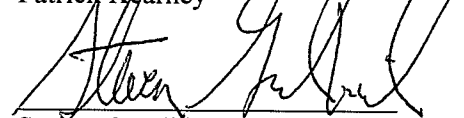
15. Petitioners' Jill Smith and Johnathan Patterson request for relief is DENIED.

Dated at Burlington, Vermont this 7th day of November, 2018.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Steven Goodkind