

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 7, 2019

7:00 p.m.

**Community Room, Burlington Police Department
1 North Avenue**

AGENDA

1. Benedict Delahunty, Melissa Westland (tenants); Abe's Corner LLC/Redstone VT (landlord) (security deposit case) re: 165 Elmwood Avenue
2. Kelly O'Malley (tenant); Sisters & Brothers Investment Group LLP (landlord) (security deposit case) re: 238 College St #105
3. Rebecca Hall (tenant); Handy Investment Group LLP (landlord) (security deposit case) re: 25 So. Willard St, Apt. 3
4. Alyssa Grant (tenant); Mary Maloney Barrows (landlord) (security deposit case) re: 241 Elmwood Avenue

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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 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Alyssa Grant
Mary Barrows

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

**In re: Request for Hearing of ALYSSA GRANT)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by MARY and ANDY BARROWS) HOUSING BOARD OF REVIEW
for Rental Unit at 241 Elmwood Ave)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 7, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Olivia Pena and Betsy McGavisk were also present. Petitioner Alyssa Grant was present and testified. Respondents Mary and Andy Barrows were also present and testified. Appearing and testifying as witnesses were Jordan Atwood and Mary Collett.

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 Mary and Andy Barrows are the owners of a rental unit, 241 Elmwood Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Alyssa Grant and Jordan Atwood moved into the rental unit with a written lease which ran from October 1, 2018 to May 31, 2019. Monthly rent was \$1900.00.
3. The amount of the security deposit was \$2100.00 part of which was paid by Champlain Valley Office of Economic Opportunity. 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 she was out of the apartment on June 10, 2019 while respondents testified the move out date was June 11, 2019.
5. Respondents did not return any of the security deposit to petitioner and did not send petitioner notice of withholding the deposit. Petitioner argued that the withholding of the deposit was willful. The basis of petitioner's argument is that respondents made it very difficult for her to vacate the apartment on

time. Petitioner stated she was supposed to be out of the apartment by June 1; however, she testified that respondents were constantly at the property giving Jordan Atwood a hard time and blocking access to the apartment so that it was difficult for them to move out. Respondents testified it took time to assess the damages and they were in constant communication with Winooski Housing Authority (“WHA”) about damages and the deposit; they also sought advice from WHA about the deposit and unpaid rent. Respondents emailed an itemized list of the damages to WHA on June 24, 2019 and indicated the security deposit was not being returned.

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. 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). Respondents did not provide notice of the withholding of the deposit to petitioner. Therefore, they forfeited the right to withhold any portion of the deposit.

9. Petitioner argued that respondent willfully withheld the deposit. If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Although respondents did not provide notice to petitioner, believing they were doing the right thing, they were in communication with WHA about the damages in the apartment and sent them an itemized list of the damages; they also told WHA the deposit was not being returned. The Board concludes the deposit was not willfully withheld.

10. 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

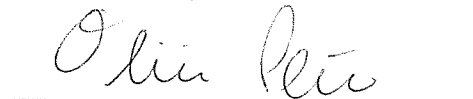
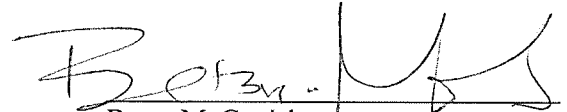
Accordingly, it is hereby ORDERED:

11. Petitioner Alyssa Grant is entitled to recover from respondents Mary and Andy Barrows the following amounts:

- a) \$2100.00 of the principal amount of the security deposit improperly withheld after June 11, 2019;
- b) Interest in the amount of \$2.53 on the entire deposit for the period October 1, 2018 to June 11, 2019; and
- c) Additional interest of \$0.01 per day from June 12, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 23rd day of October, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara
Patrick Kearney 8/15
Olivia Pena
Betsy McGavisk



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

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DATED 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Rebecca Hall
Handy Investment Group

**In re: Request for Hearing of REBECCA)
HALL Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by HANDY) HOUSING BOARD OF REVIEW
INVESTMENT GROUP for Rental Unit at)
25 So. Willard Street, #3)**

The above-named hearing came before the Housing Board of Review on October 7, 2019. Board Chair Josh O’Hara presided. Board Members Patrick Kearney, Olivia Pena and Betsy McGavisk were also present. Petitioner Rebecca Hall was present and testified. Respondent Handy Investment Group was represented at the hearing by Joe Handy who testified.

FINDINGS OF FACT

- 1

5. On July 11, 2019, respondent sent petitioner a written statement in accordance with ordinance requirements. The statement itemized deductions of \$312.91 from the deposit. Respondent returned \$269.62 of the deposit to petitioner and \$844.61 of the deposit to CVOEO. Interest in the amount of \$2.14 was credited to the deposit.

6. Petitioner disputed only the deduction of \$137.91 from the deposit for 3 days of rent in July. Petitioner argued she did not live in the apartment after July 1 so she should not be charged for rent for July 2 and 3. Respondent testified she vacated the apartment on July 3 so he was entitled to rent for 3 days in July.

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). Proper notice was provided.

10. Based on the evidence, the Board concludes the deduction for unpaid rent (the only deduction in dispute) was reasonable. Respondent withheld \$137.91 for 3 days of rent in July, 2019. The Board found the date of vacate to be July 3 so it was reasonable for respondent to withhold \$137.91 for unpaid rent for July 2019.

ORDER

Accordingly, it is hereby ORDERED:

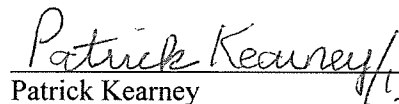
11. Petitioner Rebecca Hall's request for relief is DENIED.

DATED at Burlington, Vermont this 23rd day of October, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



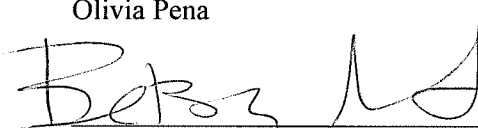
Josh O'Hara



Patrick Kearney



Olivia Pena



Betsy McGavisk



HOUSING BOARD OF REVIEW

City of Burlington

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Burlington, Vermont 05401

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CITY OF BURLINGTON**

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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Kelly O'Malley
Sisters & Brothers Investment Group

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

**In re: Request for Hearing of KELLY)
O'MALLEY Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by SISTERS AND) HOUSING BOARD OF REVIEW
BROTHERS INVESTMENT GROUP for)
Rental Unit at 238 College St., #105)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 7, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Olivia Pena and Betsy McGavisk were also present. Petitioner Kelly O'Malley was present and testified. Respondent Sisters and Brothers Investment Group was represented at the hearing by Joe Handy who 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 Sisters and Brothers Investment Group is the owner of a rental unit, 238 College Street, #105, in the City of Burlington which is the subject of these proceedings. Joe Handy manages the property.
2. Petitioner Kelly O'Malley moved into the rental unit with a written lease which ran from May 25, 2018 to May 31, 2019. Monthly rent was \$1300.00.
3. Petitioner paid a security deposit of \$1300.00 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 May 24, 2019. Petitioner notified one of respondent's property managers by text on May 24 that she was out of the unit.
5. On June 25, 2019, respondent sent petitioner a written statement informing her that \$622.40 of the deposit was being withheld to replace the damaged carpet. Respondent returned \$679.55 of the deposit to petitioner. Petitioner disputed the reasonableness of the deduction and the timeliness of

respondent's notice to her. Petitioner initially sought double damages, alleging a willfully unlawful withholding of the security deposit. She abandoned that request on the record at the hearing.

6. Interest in the amount of \$1.95 was credited to the deposit.

7. Joe Handy acknowledged the written statement was not sent on time. By way of explanation, he stated he was waiting for a quote for the carpet replacement.

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). Respondent's notice was not timely; therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly it is hereby ORDERED:

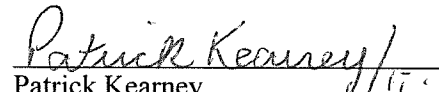
11. Petitioner Kelly O'Malley is entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

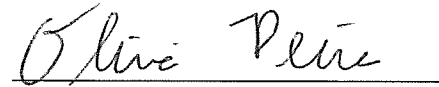
- a) \$622.40 of the principal amount of the deposit improperly withheld after June 7, 2019; and
- b) Additional interest of \$0.004 per day from June 8, 2019 until such date as the amount improperly withheld is returned to petitioner.

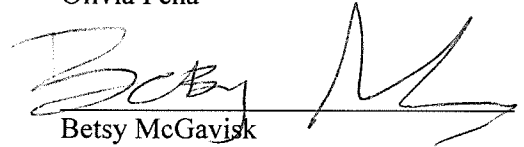
DATED at Burlington, Vermont this 23rd day of October, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Olivia Pena


Betsy McGavisk

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 7, 2019

7:00 p.m.

**Community Room, Burlington Police Department
1 North Avenue**

Minutes

Members present: Josh O'Hara, Patrick Kearney, Betsy McGavisk, Olivia Pena

Staff present: Lisa Jones

1. Benedict Delahunty, Melissa Westland (tenants); Abe's Corner LLC/Redstone VT (landlord) (security deposit case) re: 165 Elmwood Avenue
Case settled prior to hearing and case closed.
2. Kelly O'Malley (tenant); Sisters & Brothers Investment Group LLP (landlord) (security deposit case) re: 238 College St #105
Present were: Kelly O'Malley, Joe Handy; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
3. Rebecca Hall (tenant); Handy Investment Group LLP (landlord) (security deposit case) re: 25 So. Willard St, Apt. 3
Present were: Rebecca Hall, Joe Handy; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
4. Alyssa Grant (tenant); Mary Maloney Barrows (landlord) (security deposit case) re: 241 Elmwood Avenue
Present were: Alyssa Grant, Jordan Atwood, Mary Barrows, Andy Barrows, Mary Collett; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.