

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 5, 2020

7:00 p.m.

The meeting will be entirely remote and virtual. You can join the meeting via Zoom:

<https://us02web.zoom.us/j/87201139660?pwd=RE1CVWkwV3VHbE9ibzE5Qm5BZUNMUT09>

Passcode: 748616

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** +1 312 626 6799 **or** +1 669 900 6833 **or** +1 253 215 8782 **or** +1 346
248 7799

Webinar ID: 872 0113 9660

Passcode: 748616

International numbers available: <https://us02web.zoom.us/j/kznklGu3Y>

REVISED AGENDA

1. Discussion of proposed minimum housing form
2. David & Patricia Danehey-Lalime (property owners) (code case) re: 38 Marshall Drive
3. Sara Vaclavik & Douglas Lessard (tenants); Pearl Street Housing Venture (landlord) (security deposit case) re: 90 Pearl St, Apt. 401
4. Joshua Prawdzik (tenant); Great Cedars (landlord) (security deposit case) re: 191 College St, Apt. 308
5. McKale Santin (tenant); Debora Bartlett (landlord) (security deposit case) re: 46 East Ave, Apt. 1

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Minutes

Members present: Josh O'Hara, Betsy McGavisk, Olivia Pena, Charlie Gliserman

Staff present: Lisa Jones

1. Discussion of proposed minimum housing form
Present were: Patti Wehman, William Ward
McGavisk explains intent of form. Following form used for security deposit request. Two types of code cases: appeal of order and request for variance. Trying to use 1 form for both types of requests.
O'Hara suggests edit to title of form.
Wehman suggests looking at form after Permitting & Inspections has Q&A session with Board; Q&A to give board members overview of inspection process. Goal is to get all forms online – fillable forms.
O'Hara suggests tabling discussion of form until after Q&A.
Ward suggests adding question to form: what type of relief is being sought
O'Hara moves to table discussion.
Pena seconds.
All vote to table discussion of form to Oct. 19 meeting.
2. David & Patricia Danehey-Lalime (property owners) (code case) re: 38 Marshall Drive
Present were: David & Patricia Lalime, Patti Wehman, William Ward; all parties were sworn in.
Board hears evidence and testimony from all parties. Hearing concluded.
3. Sara Vaclavik & Douglas Lessard (tenants); Pearl Street Housing Venture (landlord) (security deposit case) re: 90 Pearl St, Apt. 401
Present were: Sara Vaclavik, Douglas Lessard, Deb McCaffrey, Rick Bove; all parties sworn in.
Board hears evidence and testimony from all parties. Hearing concluded.
4. Joshua Prawdzik (tenant); Great Cedars (landlord) (security deposit case) re: 191 College St, Apt. 308
Present were: Mac Stevens, Kathy Parrott. Tenant did not appear. Case dismissed.
5. McKale Santin (tenant); Debora Bartlett (landlord) (security deposit case) re: 46 East Ave, Apt. 1
Present were: McKale Santin, Debora Bartlett; all parties were sworn in.
Board hears evidence and testimony from all parties. Hearing concluded.

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

In re: Request for Hearing of McKale Santin)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by Debora Bartlett for Rental)
Unit at 46 East Avenue, Apt. 1)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 5, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Betsy McGavisk, Olivia Pena and Charlie Gliserman were also present. Petitioner McKale Santin was present and testified. Respondent Debora Bartlett 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. Respondent Debora Bartlett is the owner of a rental unit, 46 East Avenue, Apt. 1, in the City of Burlington which is the subject of these proceedings.
2. Petitioner moved into the rental unit on September 1, 2019 under the terms of a month-to-month written lease. Monthly rent was \$900.00.
3. Petitioner paid a security deposit of \$900.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on July 8, 2020.
5. On July 17, 2020, respondent sent petitioner by email, first class mail and certified mail a written statement in accordance with notice requirements. Said statement itemized damages totaling \$446.17. Included in the statement sent certified mail was a check in the

amount of \$453.83.

6. Petitioner disputed the timeliness of the notice of withholding and the return of part of his deposit. When petitioner failed to receive the deposit check he contacted respondent. Respondent discovered that the check and statement sent to petitioner by certified mail was routed to Pennsylvania and then to California; it was still in transit on July 28. Respondent stopped payment on the check and sent, by certified mail, a new check on July 28; this time, respondent mailed the check from the Colchester Post Office (rather than from Shelburne) in hopes that it would go directly to petitioner's address in Colchester. The new check was delivered on August 1, 2020.

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. Respondent sent a statement of withholding to petitioner on July 17, 2020 by email, regular mail and certified mail; the certified mail included a check for the return of part of the deposit. Petitioner did not receive the certified mail until August 1 because, through no fault of respondent's, the mail was routed by the post office to Pennsylvania and then California. When respondent discovered petitioner had not received the check, she sent a new check immediately, going so far as to mail it from the Colchester post office to ensure petitioner would receive it. The Board concludes respondent sent the statement and returned the deposit in a timely manner.

Order

Accordingly, petitioner McKale Santin's request for relief is DENIED.

DATED at Burlington, Vermont this 4th of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman

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

**In re: Request for Hearing of SARA VACLAVIK)
And DOUGLAS LESSARD Regarding) Security Deposit Appeal
Withholding of Security Deposit by PEARL)
STREET HOUSING VENTURE for Rental)
Unit at 90 Pearl Street, Apt. 401)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 5, 2020; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioners Sara Vaclavik and Douglas Lessard were present and testified. Respondent Pearl Street Housing Venture was represented at the hearing by Deb McCaffrey and Rick Bove 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 Pearl Street Housing Venture is the owner of a rental unit, 90 Pearl Street, Apt. 401, in the City of Burlington which is the subject of these proceedings. Deb McCaffrey manages the property.
2. Petitioners Sara Vaclavik and Douglas Lessard moved into the rental unit with a written lease which ran from May 12, 2016 to April 30, 2017 and renewed thereafter. Monthly rent was \$1080.00.
3. Petitioners paid a security deposit of \$1080.00 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 May 31, 2020.

5. On June 11, 2020, respondent mailed a statement to petitioners itemizing deductions of \$85.00 from the security deposit; respondent returned \$995.00 of the deposit to petitioners. The statement was returned to Deb McCaffrey by the post office. On July 6, 2020 (immediately after receiving the statement back from the post office), Ms. McCaffrey mailed out the statement and check again to petitioners which was received by them shortly thereafter.

6. Respondent's itemized statement did not include notice to petitioners of their right to appeal the withholding of their deposit to this Board. Deb McCaffrey testified that she was unaware of that notice requirement. In addition, interest was not credited to the deposit.

7. Petitioners disputed the withholding of part of their deposit and the timeliness of the notice sent to them. Petitioners also argued that the deposit was willfully withheld based on the lack of timely notice.

8. Petitioners also sought a refund of \$180 for a storage unit rental. Petitioners testified that a previous property manager authorized the return of the rental fee.

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 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 mailed out a statement and returned a portion of the deposit on June 11, 2020. However, the statement was returned to respondent by the U.S. Postal Service. Immediately after receiving the returned mail, Deb McCaffrey mailed it out again. The Board concludes that notice was sent in a timely manner.

12. If the failure to return the security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioners argued that respondent willfully withheld the deposit on the basis that notice was not sent in a timely manner. However, the Board has already concluded that notice was sent in a timely manner and through no fault of respondent's it was returned to them by the U.S. Postal Service. The Board concludes the deposit was not willfully withheld.

13. 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 petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

14. Petitioners also sought a refund of a storage unit rental fee they paid. However, this Board's authority only relates to the return of a security deposit. Therefore, we cannot order a refund of such fee.

15. 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:

16. Petitioners Sara Vaclavik and Douglas Lessard are entitled to recover from respondent Pearl Street Housing Venture the following amounts:

- a) \$85.00 of the principal amount of the security deposit improperly withheld after June 14, 2020;
- b) Interest in the amount of \$11.03 on the entire deposit for the period May 12, 2016 to

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

June 14, 2020; and

c) Additional interest of \$0.0006 per day from June 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 4th day of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman

**CITY OF BURLINGTON
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of DAVID and)
PATRICIA DANEHEY-LALIME Regarding the) Appeal of Minimum Housing
Rental Property at 38 Marshall Drive) Order**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 5, 2020; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Betsy McGavisk, Olivia Pena and Charlie Gliserman were also present. Petitioners David and Patricia Danehey-Lalime were present and testified. Minimum Housing Inspector Steve Cormier; Patti Wehman, Division Manager of Housing and Code Enforcement; and William Ward, Director of Permitting and Inspections, were 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. Petitioners David and Patricia Danehey-Lalime are the owners of the rental property, 32 Marshall Drive, in the City of Burlington which is the subject of these proceedings.
2. On September 1, 2020, Minimum Housing Inspector Steve Cormier conducted an inspection of the property and issued an order on September 8, 2020. In that Order, Inspector Cormier noted 2 minimum housing violations at the property.
3. On September 3, 2020, petitioners appealed the Minimum Housing Order. Petitioners do not dispute that the exterior stairs needed a railing, but questioned why the lack of one wasn't cited previously. Petitioners complain generally about the lack of consistency between housing inspectors. Similarly, petitioners do not dispute needing to paint the ceiling in the bathroom, but question why a minor issue is an infraction. Petitioners completed the required painting and are in the process of having a railing installed.

4. Petitioners also appeal the issuance of a 4-year Certificate of Compliance rather than a 5-year certificate which they previously had.

5. William Ward explained that Section 18-19 of the Minimum Housing Code allows for a 5-year certificate of compliance if there is no deficiency at the rental property. However, even 1 deficiency means that only a 4-year certificate of compliance is issued.

CONCLUSIONS OF LAW

6. Section 18-42(d) of the Minimum Housing Code gives the Board the authority “to reverse or affirm, in whole or in part, any order or other action of the inspector and to make such order, requirement, decision or determination as ought to be made....”

7. Section 18-18 of the Minimum Housing Code requires an owner of a rental property to have a certificate of compliance in order to rent the property.

8. Under Section 18-19(c) of the Code, Permitting and Inspections shall issue a 5-year certificate of compliance for a rental property found to have no violations of the minimum housing standards. Under Section 18-19(d) a property found to have 5 or fewer violations of the minimum housing standards, and the violations are corrected within the time set for compliance, shall be issued a 4-year certificate of compliance.

9. Two violations of the minimum housing standards were found at petitioners’ property when it was inspected on September 1, 2020. Petitioners did not contest the violations. Under the Minimum Housing Code, Permitting and Inspections could only issue a 4-year certificate as there were 5 or fewer violations found. Permitting and Inspections was correct to do so.

ORDER

Accordingly, it is hereby ORDERED:

10. The Board affirms the Minimum Housing Order dated September 8, 2020 and determines that only a 4-year certificate of compliance can be issued for the property.

Dated at Burlington, Vermont this 4th of November, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman