

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 3, 2022

7:00 p.m.

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

<https://zoom.us/j/97268140800>

Or One tap mobile:

US: +13017158592,,97268140800# or +13092053325,,97268140800#

Or Telephone:

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

US: +1 301 715 8592 or +1 309 205 3325 or +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099
or +1 386 347 5053 or +1 564 217 2000 or +1 669 444 9171 or +1 669 900 6833 or +1 719 359 4580 or +1
253 215 8782 or +1 346 248 7799

Webinar ID: 972 6814 0800

International numbers available: <https://zoom.us/u/acdBNfYm6P>

AGENDA

1. John Hegarty (tenant); Ruby Thibault (landlord) (security deposit case) re: 38 Monroe St. (rescheduled from meeting of 9/19/22)
2. Kayla Davis (tenant); 137 N. Winooski Ave LLC/McMahon Property Management (landlord) (security deposit case) re: 137 N. Winooski Ave., #1 (postponed from meeting of 9/19/22)

Rev. 9/20/22

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, Charlie Gliserman, Evan Litwin, Josh Wronski and Olivia Taylor

Staff present: Lisa Jones

Meeting called to order at 7:03 p.m. Evan Litwin makes a motion to amend the agenda, adding 2 items. Charlie Gliserman seconds the motion. Board votes unanimously to add items 3 and 4 to the agenda.

Agenda

1. John Hegarty (tenant); Ruby Thibault (landlord) (security deposit case) re: 38 Monroe St. (rescheduled from meeting of 9/19/22)
Present were Ruby Thibault and Nadine Scibek, attorney for Ruby Thibault. John Hegarty did not appear. Betsy McGavisk asked what communications Lisa Jones, Clerk for the Board, had with Mr. Hegarty. Lisa Jones noted she emailed Hegarty the Notice of Hearing and Agenda on Sept. 20, 2022 and has had no communication with him since that time. The hearing had already been rescheduled from 9/19/22 when Hegarty failed to appear. Nadine Scibek opposed rescheduling the hearing. Betsy McGavisk indicated it was likely the case would be dismissed barring some extraordinary circumstance.
2. Kayla Davis (tenant); 137 N. Winooski Ave LLC/McMahon Property Management (landlord) (security deposit case) re: 137 N. Winooski Ave., #1 (postponed from meeting of 9/19/22)
Present were Kayla Davis and Matt Boudreau. Both parties were sworn in. Both parties submitted evidence and testimony. The hearing was concluded.
3. Appointment of officers
Evan Litwin nominated Betsy McGavisk for Chair of the Board. Olivia Taylor seconded the nomination. Discussion ensued as to anyone else's interest in serving as Chair. The Board voted unanimously to have Betsy McGavisk serve as Chair of the Board. Olivia Taylor nominates Evan Litwin to serve as Vice Chair; Josh Wronski seconds the nomination. The Board voted unanimously to have Evan Litwin serve as Vice Chair of the Board.
4. Training for Board
Evan Litwin introduces the topic of training for the Board. The Board discusses topics of interest for a training, and how long a training should be. Topics of interest included: a refresher on Code issues, practicing the Board's meeting introduction, approaches to explaining notice requirements and forfeiture of deposit at a hearing and clarity around the Board's role in a broader sense (community outreach, education, etc). The Board discusses possible dates for training. Due to conflicting schedules the Board agrees to wait until the new year and settles on Jan. 9, 2023 at 5:30 p.m. for training.

Meeting adjourned at 8:01 p.m.

Board deliberates 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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: Kayla Davis
Matt Boudreau

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

In re: Request for Hearing of KAYLA DAVIS)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by 137 NORTH WINOOSKI)
AVE, LLC for Rental Unit at 137 North)
Winooski Avenue, #1)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on October 3, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Charlie Gliserman, Josh Wronski and Olivia Taylor were also present. Petitioner Kayla Davis was present and testified. Respondent 137 North Winooski Ave., LLC was represented at the hearing by Matt Boudreau 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 137 North Winooski Ave., LLC is the owner of a rental unit, 137 N. Winooski Avenue, #1, in the City of Burlington which is the subject of these proceedings. Matt Boudreau manages the property.
2. Petitioner Kayla Davis moved into the rental unit with a written lease which ran from July 1, 2021 to June 30, 2022. According to said lease, monthly rent was \$1650.00.
3. Petitioner paid a security deposit of \$1850.00 to respondent. The written lease does not indicate that there was a pet in the apartment or that an additional payment was required at the beginning of the lease for a pet. 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 June 24, 2022.

5. On July 6, 2022, respondent sent petitioner a statement indicating that \$245.00 of the deposit was being withheld for cleaning. The written statement did not inform petitioner of her right to request a hearing to this Board within 30 days of receipt of the statement. Respondent returned \$1605.00 of the deposit to petitioner.

6. Interest was not credited to the deposit. Respondent's statement submitted into evidence acknowledged their oversight in not returning interest on the deposit. The statement indicated that interest in the amount of \$3.70 should have been returned, and would be returned at the conclusion of this hearing.

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 dispute the withholding of the deposit to this Board within 30 days of receipt of the landlord's statement. Therefore, the Board concludes that respondent forfeited the right to withhold any part of the deposit.

11. Under city ordinance a security deposit may not exceed the amount of one month's rent; however, an owner may also require an additional payment equal to half of one month's rent as a condition for allowing a tenant to have a pet in the rental unit during the tenancy. Minimum Housing Code Sec. 18-120(a). In this case, the amount of monthly rent was \$1650.00. Petitioner paid a security deposit of \$1850.00. The lease did not indicate that there was a pet in

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

the unit for which an additional deposit was collected. Respondent is hereby on notice as to the amount of a security deposit that can be collected from a tenant.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Kayla Davis is entitled to recover from respondent 137 North Winooski Avenue, LLC the following amounts:

- a) \$245.00 of the principal amount of the security deposit improperly withheld after July 8, 2022;
- b) Interest in the amount of \$3.70 on the entire deposit for the period July 1, 2021 to June 24, 2022 if it has not already been returned to petitioner; and
- c) Additional interest of \$0.002 per day from July 9, 2022 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19th day of October, 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



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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 10/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair

cc: John Hegarty
Nadine Scibek, Esq.

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

**In re: Request for Hearing of JOHN HEGARTY)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by RUBY THIBAUT for)
Rental Unit at 38 Monroe Street)**

ORDER

The above-named hearing came before the Housing Board of Review on October 3, 2022; the hearing was held remotely via Zoom. Board Chair Betsy McGavisk presided. Board Members Evan Litwin, Charlie Gliserman, Olivia Taylor and Josh Wronski were also present. Although notified of the hearing, petitioner John Hegarty was not present. Respondent Ruby Thibault and her attorney, Nadine Scibek, were present.

This hearing was rescheduled from a hearing held on September 19, 2022 which petitioner did not attend; respondent and her attorney were present at that hearing. Although petitioner should have known about the September 19 hearing (Nadine Scibek having provided him with evidence she submitted to the Board for that hearing), the Board learned that the notice sent to petitioner was not delivered to him because he had a new mailing address. In an email dated September 20, 2022 to Lisa Jones, Clerk for the Board, petitioner stated he had not received notice of the September 19 hearing and requested that the hearing be rescheduled; petitioner also provided a new mailing address to the Board. Nadine Scibek objected to rescheduling the hearing. Lisa Jones confirmed that the Notice of Hearing mailed to petitioner was returned by the post office as the address was no longer valid. As petitioner did not receive notice of the September 19 hearing, the Board rescheduled the hearing.

Lisa Jones replied to petitioner's September 20 email and informed him that a new hearing was scheduled for October 3, 2022 at 7pm. Also on September 20, 2022,

Lisa Jones emailed the Notice of Hearing and Agenda for October 3, 2022 at 7pm to both parties.

Petitioner has not contacted the Board since September 20, 2022.

As petitioner requested the hearing and did not appear for either hearing, the case is dismissed.

DATED at Burlington, Vermont this 19th day of October, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Chair
On behalf of all Board members