



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

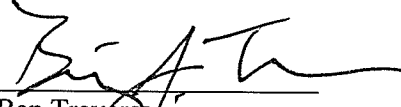
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/25/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: William Newton for Seven Fourteen Riverside Ave, LLC
Ita Meno
William Ward

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

**In re: Request for Hearing of Seven Fourteen)
Riverside Ave. LLC Regarding the) CITY OF BURLINGTON
Rental Property at 714-716 Riverside) HOUSING BOARD OF REVIEW
Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Seven Fourteen Riverside Ave. LLC was represented at the hearing by William Newton, Appletree Bay Property Management, who testified. Minimum Housing Inspector Ita Meno and William Ward, Director Code Enforcement Office, were also present.

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 Seven Fourteen Riverside Ave. LLC is the owner of property, 714-716 Riverside Avenue, in the City of Burlington which is the subject of these proceedings; there are 6 rental units at the property. Appletree Bay Property Management ("Appletree Bay") manages the property; William Newton is the property rental manager for Appletree Bay.

2. On May 18, 2017, Minimum Housing Inspector Ita Meno conducted an inspection of the property and issued an order. In that Order, Ms. Meno noted 21 minimum housing violations at the property.

3. On August 4, 2017, Ita Meno conducted a re-inspection of the property and noted 9 minimum housing code violations in 3 units at the property, six of which Ms. Meno alleged had been cited in the May 18 order. As deficiencies were not corrected between the original inspection and re-inspection, the Code Enforcement Office assessed re-inspection fees of \$180.00 - \$60.00 per unit.

4. The Minimum Housing Code provides that fees be paid by the owner of each property for a re-inspection that is required due to the existence of violations of the Code; for the first re-inspection, \$60.00 per unit is assessed. Minimum Housing Code Sec. 18-30(b).

5. William Newton disputed the fines as being unjust, even though Respondent (unbeknownst to him) had paid the re-inspection fees. The basis of Mr. Newton's dispute is that there were additional items cited in the re-inspection and it was unfair to levy fines on new items. However, Mr. Newton misunderstands how re-inspection fees are assessed. Code Enforcement only assesses fees on items that were not corrected from the original order. In this instance, Ita Meno alleged that 6 deficiencies appearing in the original order were not corrected at the re-inspection. Therefore, the Code Enforcement Office assessed \$180.00 in re-inspection fees.

6. The May 18 and August 4 orders also cited non-compliance with the city's lead-based paint responsibility. Section 18-112(b) of the Minimum Housing Code states:

All paint shall be presumed to be lead-based paint (LBP) when present on all dwellings constructed prior to January 1, 1978 unless the paint was found to be not lead-based by a state-certified lead testing inspector who has issued a report to the owner of their findings. Property owners wishing to be exempt from all LBP compliance activities under this ordinance must submit a copy of the certified inspectors' written report showing the dwelling to be free of LBP to the code enforcement office.

According to city records, the building was built in 1899. Thus, in her orders, Ms. Meno requested that respondent forward to the Code Enforcement Office a copy of the most recently completed EMP (essential maintenance practices) certification form filed with the State Lead Program as required by law. William Newton argued that the ordinance did not apply to the property because it was rebuilt in 1998.

CONCLUSIONS OF LAW

7. The Board has the power 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. Minimum Housing Code, Sec. 18-42(d).

8. The Minimum Housing Code allows for the assessment of re-inspection fees when deficiencies found in an Order are not corrected when the re-inspection occurs. Respondent was assessed \$180.00 in re-inspection fees for deficiencies cited in the May 18, 2017 which were not corrected at the time of the re-inspection on August 4, 2017. The Board concludes the assessment of fees was proper and correct.

9. Section 18-112 of the Minimum Housing Code requires that dwellings constructed prior to January 1, 1978, presumed to contain lead-based paint (LBP), to comply with essential maintenance practices. If an owner of property wants to be exempt from the LBP compliance activities, they must submit certification that the property is free of LBP. Respondent has not submitted certification that either the property is exempt from the requirements or that it is in compliance with them. Therefore, the Board affirms the Minimum Housing Order with respect to the LBP certification requirement.

ORDER

Accordingly, it is hereby ORDERED:

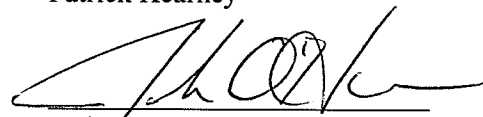
10. The Minimum Housing Order dated August 4, 2017 and the assessment of \$180 for re-inspections fees are affirmed.

Dated at Burlington, Vermont this 25th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Josh O'Hara



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 10/25/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: William Newton for Seven Hundred Riverside Ave, LLC
Ita Meno
William Ward

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

**In re: Request for Hearing of Seven Hundred)
Riverside Ave. LLC Regarding the) CITY OF BURLINGTON
Rental Property at 700-710 Riverside) HOUSING BOARD OF REVIEW
Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Seven Hundred Riverside Ave. LLC was represented at the hearing by William Newton, Appletree Bay Property Management, who testified. Minimum Housing Inspector Ita Meno and William Ward, Director Code Enforcement Office, were also present.

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 Seven Hundred Riverside Ave. LLC is the owner of property, 700-710 Riverside Avenue, in the City of Burlington which is the subject of these proceedings; there are 8 rental units at the property. Appletree Bay Property Management ("Appletree Bay") manages the property; William Newton is the property rental manager for Appletree Bay.

2. On May 18, 2017, Minimum Housing Inspector Ita Meno conducted an inspection of the property and issued an order. In that Order, Ms. Meno noted 16 minimum housing violations at the property.

3. On August 4, 2017, Ita Meno conducted a re-inspection of the property and noted 6 minimum housing code violations in 4 units at the property, four of which Ms. Meno alleged had been cited in the May 18 order. As 4 items were not corrected between the original inspection and re-inspection, the Code Enforcement Office assessed re-inspection fees of \$240.00 - \$60.00 per unit.

4. The Minimum Housing Code provides that fees be paid by the owner of each property for a re-inspection that is required due to the existence of violations of the Code; for the first re-inspection, \$60.00 per unit is assessed. Minimum Housing Code Sec. 18-30(b).

5. William Newton disputed the fines as being unjust, even though Respondent (unbeknownst to him) had paid the re-inspection fees. The basis of Mr. Newton's dispute is that there were additional items cited in the re-inspection and it was unfair to levy fines on new items. However, Mr. Newton misunderstands how re-inspection fees are assessed. Code Enforcement only assesses fees on items that were not corrected from the original order. In this instance, Ita Meno alleged that 4 deficiencies appearing in the original order were not corrected at the re-inspection. Therefore, the Code Enforcement Office assessed \$240.00 in re-inspection fees.

6. Item 6 in the August 4 Order found that a plumbing drain in the bathroom of Unit E was obstructed, leaking or defective. Although that item was not cited in the original Order, Ita Meno connected it to the cause of the ceiling in the bathroom of Unit D being unsound which was cited in the May 18 order. Consequently, as she connected that new item to one cited in the original order, she assessed a re-inspection fee for that item.

CONCLUSIONS OF LAW

7. The Board has the power 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. Minimum Housing Code, Sec. 18-42(d).

8. The Minimum Housing Code allows for the assessment of re-inspection fees when deficiencies found in an Order are not corrected when the re-inspection occurs. Respondent was assessed \$240.00 in re-inspection fees for 4 deficiencies cited in the May 18, 2017 which were not corrected at the time of the re-inspection on August 4, 2017. However, item 6 of the August 4 order was not cited in the May 18 order; therefore, the Board concludes it was not appropriate to assess a re-inspection fee for this item. Accordingly, \$60.00 should be returned to respondent.

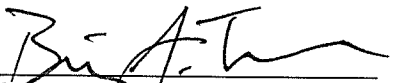
ORDER

Accordingly, it is hereby ORDERED:

9. Respondent Seven Hundred Riverside Ave LLC is entitled to the return of \$60.00 from the Code Enforcement Office for a re-inspection fee improperly assessed by them.

Dated at Burlington, Vermont this 25th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Josh O'Hara



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

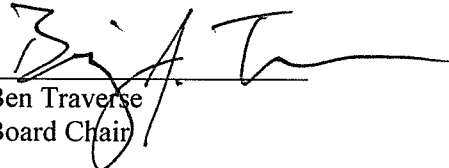
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Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require 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 10/25/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: William Newton for Six Eighty Riverside Ave, LLC
Ita Meno
William Ward

**In re: Request for Hearing of Six Eighty)
Riverside Ave. LLC Regarding the) CITY OF BURLINGTON
Rental Property at 680-698 Riverside) HOUSING BOARD OF REVIEW
Avenue)**

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Seven Hundred Riverside Ave. LLC was represented at the hearing by William Newton, Appletree Bay Property Management, who testified. Minimum Housing Inspector Ita Meno and William Ward, Director Code Enforcement Office, were also present.

FINDINGS OF FACT

3. On August 4, 2017, Ita Meno conducted a re-inspection of the property and noted 4 minimum housing code violations in 2 units at the property, three of which Ms. Meno alleged had been cited in the May 18 order. The Code Enforcement Office assessed \$180 in re-inspection fees. However, at the hearing, William Ward noted that the charged was mistakenly assessed for 3 units, rather than 2 units. Therefore, the re-inspection fees should have been \$120.00, not \$180.00.

4. The Minimum Housing Code provides that fees be paid by the owner of each property for a re-inspection that is required due to the existence of violations of the Code; for the first re-inspection, \$60.00 per unit is assessed. Minimum Housing Code Sec. 18-30(b).

5. William Newton disputed the fines as being unjust, even though Respondent (unbeknownst to him) had paid the re-inspection fees. The basis of Mr. Newton's dispute is that there were additional items cited in the re-inspection and it was unfair to levy fines on new items. However, Mr. Newton misunderstands how re-inspection fees are assessed. Code Enforcement only assesses fees on items that were not corrected from the original order.

CONCLUSIONS OF LAW

6. The Board has the power 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. Minimum Housing Code, Sec. 18-42(d).

7. The Minimum Housing Code allows for the assessment of re-inspection fees when deficiencies found in an Order are not corrected when the re-inspection occurs. Respondent was assessed \$180.00 in re-inspection fees for 3 deficiencies found in 3 units cited in the May 18, 2017 which were not corrected at the time of the re-inspection on August 4, 2017. However, Code Enforcement acknowledged that the re-inspection fees were miscalculated; the deficiencies were found in 2 units so that the re-inspection fee should have been \$120.00. Accordingly, \$60.00 should be returned to respondent.

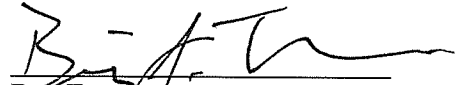
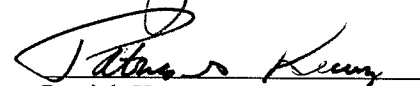
ORDER

Accordingly, it is hereby ORDERED:

8. Respondent Six Eighty Riverside Ave LLC is entitled to the return of \$60.00 from the Code Enforcement Office for a re-inspection fee improperly assessed by them.

Dated at Burlington, Vermont this 25th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Josh O'Hara



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11
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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

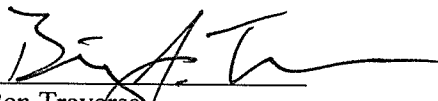
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 10/25/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Ben Green
Olof Franzon for Franzon Holdings LLC

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

**In re: Request for Hearing of Ben Green)
 Regarding Withholding of Security) CITY OF BURLINGTON
 Deposit by Franzon Holdings LLC for) HOUSING BOARD OF REVIEW
 Rental Unit at 284 Maple Street, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Ben Green was present and testified. Respondent Franzon Holdings LLC was represented at the hearing by Olof Franzon who testified. Also appearing and testifying were Sara Tucker and Christina Seguin.

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 Franzon Holdings LLC is the owner of a rental unit, 284 Maple Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Olof Franzon manages the property.
2. Petitioner Ben Green moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017. Monthly rent was \$950.00.
3. Petitioner paid a security deposit of \$950.00 and a pet deposit of \$475.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. The date petitioner vacated the apartment was in dispute. Petitioner testified that he moved out of the apartment on July 2, 2017. Olof Franzon testified that he learned petitioner was out of the apartment on July 10, 2017.
5. On July 26, 2017, in response to an email from petitioner about the return of his deposit, Olof Franzon informed petitioner, by email, that he was withholding some of the deposit for rent, cleaning and

the failure to return a key. Mr. Franzon stated he would return the pet deposit of \$475.00. Respondent's email does not inform petitioner of his right to appeal the withholding of the deposit. Respondent returned \$852.50 of the deposit to petitioner; petitioner received the check on August 1, 2017. There is no indication that interest was credited to the deposit as there was no itemized statement.

6. Petitioner argued that respondent's failure to return the deposit within 14 days of his vacate date was willful. Petitioner informed Olof Franzon by email sent on July 26, 2017 that he was required to return the deposit within 14 days of his move out date; petitioner also argued respondent's reasons for withholding the deposit were arbitrary. Mr. Franzon argued that he was entitled to withhold some money from the deposit because petitioner failed to give him sufficient notice that he was moving out; in addition, Mr. Franzon believed he was within his rights to withhold some money for items left in the apartment and for cleaning.

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. 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 return the deposit with an itemized statement within 14 days of the date petitioner vacated the apartment and 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.

11. Both city ordinance and state law provide that if the failure to return a 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). Petitioner argued that respondent's failure to return the deposit within 14 days was willful, arguing the deductions were arbitrary and without merit. Respondent argued that the deductions were reasonable, and thus, he was not willfully withholding the deposit.

ORDER

Accordingly, it is hereby ORDERED:

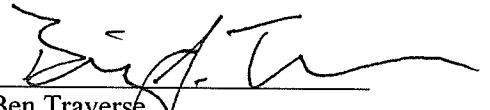
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

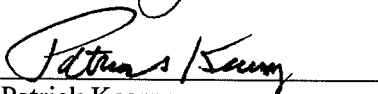
12. Petitioner Ben Green is entitled to recover from respondent Franzon Holdings LLC the following amounts:

- a) \$572.50 of the principal amount of the deposit improperly withheld after July 24, 2017;
- b) Interest in the amount of \$4.08 on the principal amount of the deposit for the period June 1, 2016 to July 24, 2017; and
- c) Additional interest of \$0.004 per day from July 25, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 26th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Josh O'Hara



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**

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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 25 October 2017

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Samantha Lednicky, Esq.
Richard Leonard

**In re: Request for Hearing of Ian Moore)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by Richard Leonard) HOUSING BOARD OF REVIEW
for Rental Unit at 515 North Street)**

Upon consideration of the evidence and the applicable law, the Hearing Officers make the following Findings of Fact, Conclusions of Law, and Order:

1. Respondent Richard Leonard is the owner of a rental unit, 515 North Street, in the City of Burlington which is the subject of these proceedings.

2. Petitioner Ian Moore moved into the rental unit with a lease which ran from June 2, 2016 to May 28, 2017; respondent shared the unit with 3 other people. Monthly rent was \$2900.00.

3. Petitioner and his roommates paid a security deposit of \$2900.00 to respondent; petitioner's share of the deposit was \$725.00. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

4. At the end of the tenancy, petitioner arranged to live in the unit during July and August, 2017. Consequently, when petitioner left the rental unit in May, he left his possessions in his room (with respondent's consent) so that they would be there when he returned in July. According to respondent,

petitioner's security deposit was transferred for the new lease agreement, an agreement that petitioner never saw.

5. Petitioner moved back into the rental unit on or about July 17, 2017. Upon his arrival he discovered that one of the new tenants had a cat and that his room was covered in cat hair. Petitioner discovered that he was very allergic to the cat and unable to stay in the unit as planned. On July 18, petitioner notified respondent that he needed to move out of the unit due to the cat. On July 19, 2017 moved out of the unit. On July 20, respondent acknowledged knowing petitioner's plans with respect to moving out of the unit.

6. Respondent did not return petitioner's deposit to him nor did he provide a written statement to petitioner itemizing deductions from it. Respondent was unaware of his obligations regarding the return of the deposit since he does not customarily require a security deposit from tenants. Respondent applied petitioner's deposit to rent for June, 2017, believing that he was entitled to collect rent for that month. Petitioner was unaware that respondent expected him to pay for rent for June when he wasn't living there; it was petitioner's understanding that he was only paying for 1 month's rent (July 17-August 11).

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. 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 return the deposit to petitioner with a written statement itemizing deductions from it within 14 days and by failing to provide petitioner with notice of his appeal rights. Therefore, the Hearing Officers conclude respondent forfeited the right to withhold any part of the deposit.

11. Both city ordinance and state law provide that if the failure to return a 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). Petitioner argued that respondent's failure to return the deposit and send a statement was willful. The Hearing Officers conclude the failure to return the deposit and provide notice was not willful: respondent believed he was within his rights to

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

withhold the deposit for rent and was unfamiliar with the obligations concerning the withholding of a security deposit.

12. 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:

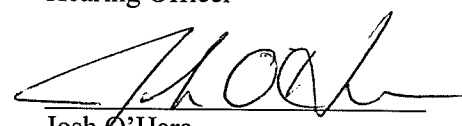
13. Petitioner Ian Moore is entitled to recover from respondent Richard Leonard the following amounts:

- a) \$725.00 of the principal amount of his security deposit improperly withheld after August 3, 2017;
- b) Interest in the amount of \$2.12 on the entire deposit for period June 2, 2016 to August 3, 2017; and
- c) Additional interest of \$0.005 per day from August 4, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 25TH of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Patrick Kearney
Hearing Officer


Josh O'Hara
Hearing Officer