

BURLINGTON HOUSING BOARD OF REVIEW

Monday, September 19, 2022

7:00 p.m.

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

<https://zoom.us/j/95537489200>

Or One tap mobile:

US: +13017158592,,95537489200# or +13092053325,,95537489200#

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 +1 346 248 7799 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

Webinar ID: 955 3748 9200

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

AGENDA

1. John Hegarty (tenant); Ruby Thibault (landlord) (security deposit case) re: 38 Monroe St
2. Jackson Bond, Nicholas Levine, Joshua Barski, Kyle Smelser (tenants); David Palmer (landlord) (security deposit case) re 366 Pearl St (postponed from meeting of 9/6/22)
3. Juliette Fredericks, Erin Tevnan, Julia Hart (tenants); Rich Bassett (landlord) (security deposit case) re: 117 No. Winooski Ave. (postponed from meeting of 9/6/22)
4. Quinn Kimball (tenant); J&M Properties (landlord) (security deposit case) re: 80 Front St
5. Kayla Davis (tenant); 137 N. Winooski Ave LLC/McMahon Property Management (landlord) (security deposit case re: 137 N. Winooski Ave., #1

Rev. 9/6/22

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.

BURLINGTON HOUSING BOARD OF REVIEW

Monday, September 19, 2022

7:00 p.m.

Remote meeting

MINUTES

Board members present: Betsy McGavisk, Evan Litwin, Charlie Gliserman, Olivia Taylor, Josh Wronski

Staff present: Lisa Jones

1. John Hegarty (tenant); Ruby Thibault (landlord) (security deposit case) re: 38 Monroe St
Present were Nadine Scibek (attorney for Ruby Thibault) and Ruby Thibault; both were sworn in. John Hegarty was not present. Lisa Jones noted that the Notice of Hearing sent to John Hegarty was returned by the post office. Nadine Scibek stated that she emailed evidence to John Hegarty, referencing the hearing, so he should have known about it. Vice Chair Betsy McGavisk requested that Lisa Jones reach out to John Hegarty to find out why he was not present. Vice Chair McGavisk indicated the hearing might be rescheduled; Nadine Scibek objected to rescheduling a hearing.
2. Jackson Bond, Nicholas Levine, Joshua Barski, Kyle Smelser (tenants); David Palmer (landlord) (security deposit case) re 366 Pearl St (postponed from meeting of 9/6/22)
Present were Jackson Bond, Nicholas Levine, Joshua Barski, Kyle Smelser and David Palmer. All parties were sworn in. Both parties presented their evidence and testimony. The hearing was concluded.
3. Juliette Fredericks, Erin Tevnan, Julia Hart (tenants); Rich Bassett (landlord) (security deposit case) re: 117 No. Winooski Ave. (postponed from meeting of 9/6/22)
Present were Juliette Fredericks, Erin Tevnan, Julia Hart, Rich Bassett, Maggie McCloskey and Bill Ward. All parties and their witnesses were sworn in. Both parties presented their evidence and testimony. The hearing was concluded.
4. Quinn Kimball (tenant); J&M Properties (landlord) (security deposit case) re: 80 Front St
Present was Quinn Kimball. The landlord did not appear. Quinn Kimball was sworn in and presented their evidence and testimony. The hearing was concluded.
5. Kayla Davis (tenant); 137 N. Winooski Ave LLC/McMahon Property Management (landlord) (security deposit case re: 137 N. Winooski Ave., #1
This case was rescheduled for the Board's next meeting (Oct. 3, 2022).

The meeting was adjourned at 8:40 p.m.

The Board deliberated 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: Jackson Bond (for all tenants)
David Palmer

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

**In re: Request for Hearing of JACKSON BOND,)
NICHOLAS LEVINE, JOSHUA BARSKI)
And KYLE SMELSER Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
DAVID PALMER for Rental Unit at 366)
Pearl Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 19, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin, Josh Wronski and Olivia Taylor were also present. Petitioners Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser were present and testified. Respondent David Palmer 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 David Palmer is the owner of a rental unit, 366 Pearl Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser moved into the rental unit with a written lease which ran from June 1, 2021 to May 26, 2022. Monthly rent was \$5,000.00.
3. Petitioners paid a security deposit of \$4,500.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. The parties disputed the move out date. Petitioners testified they vacated the house on May 26, 2022 when the lease ended. Respondent testified that Joshua Barski returned the keys to the house to him on May 27, 2022 and continued to move items out of it. The Board finds petitioners vacated the house on May 27, 2022.

5. On June 1, 2022, respondent emailed petitioners and informed them of likely deductions from the deposit to cover damages and cleaning in the house, for unpaid rent and for the cost to remove items left in the unit. Respondent indicated he was still gathering bills and estimates for the repairs and cleaning and would send a detailed itemization once he had them.

6. On June 9, 2022, respondent emailed petitioners again and informed them he was still waiting for bills from contractors. The email indicated he paid a cleaning crew \$500.00 to clean the house. Respondent indicated he would finalize deductions from the deposit once he had all the bills from the contractors.

7. On June 13, 2022, respondent emailed petitioners with a list of deductions from the security deposit. The email itemized deductions of \$4,854.44 from the deposit. In addition, respondent's email indicated he was still calculating the costs for additional repairs in the house. Respondent stated that none of the deposit would be returned as the damages and unpaid rent exceeded the cost of the deposit. Interest was not credited to the deposit.

8. None of respondent's emails included notice to petitioners of their right to request a hearing before this Board within 30 days. Respondent acknowledged he did not provide that notice to petitioners.

9. At the hearing respondent questioned why the Board was hearing the case as he filed a complaint against petitioners in Small Claims Court on September 2, 2022. Respondent believed the Board should defer to Small Claims Court. Petitioners filed their request for hearing on July

8, 2022 on the basis that the deposit had not been returned and they did not receive an itemized list of deductions from the deposit. On July 11, 2022, the Board's Clerk notified both parties of petitioners' filing. On August 17, 2022, the Board notified both parties that their dispute was scheduled for hearing on September 6, 2022. Respondent requested postponement of the September 6 hearing which was granted. The hearing was then rescheduled for this meeting date.

Conclusions of Law

10. 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.

11. 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.

12. State law gives municipalities the authority to create a housing board of review. 24 V.S.A. Sec. 5005. Under that authority, a housing board of review has the power to hear disputes related to security deposits. Ordinances related to housing boards (as well as housing codes) are to be read most favorably to municipalities; it was the intent of the legislature to give municipalities the fullest and most complete powers possible concerning these matters. 24 V.S.A. Sec. 5009. In the subject case, petitioners filed a request for hearing on July 8, 2022 as was their right under city ordinance. Minimum Housing Code Sec. 120. The Board noticed that filing to the parties on July 11, 2022, in essence taking jurisdiction over the dispute. Not until 2 months later - after respondent was granted postponement of the first scheduled hearing - did

respondent file a complaint in Small Claims Court. Respondent argues that the Board should defer to the court but cites no provision that we are required to do so. Consequently, in keeping with the intent of the legislature's grant of authority, we will not defer the matter to small claims court, particularly when respondent's complaint was filed months after petitioners' request for a hearing.

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 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).

14. 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 within 30 days; 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

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

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 was required to return the deposit with an itemized list of deductions no later than June 10, 2022 – 14 days from the date petitioners vacated the house. Even if respondent's emails of June 1 or June 9 could be considered an itemized statement of deductions, respondent did not provide petitioners with notice of their opportunity to appeal in any of his emails. Consequently, the Board concludes respondent forfeited the deposit.

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 Jackson Bond, Nicholas Levine, Joshua Barski and Kyle Smelser are entitled to recover from respondent David Palmer the following amounts:

a) \$4500.00 of the principal amount of the security deposit improperly withheld after June 10, 2022;

b) Interest in the amount of \$11.52 on the entire deposit for the period June 1, 2021 through June 10, 2022; and

c) Additional interest of \$0.03 per day from June 11, 2022 until such date as the amount improperly withheld is returned to petitioners.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor

Evan Litwin, concurring.

Deferring to the upper courts' decision *In re Soon Kwon*, the Board is held strictly to the literal interpretation of Burlington's security deposit ordinance (Minimum Housing Code Sec. 18-120). In this case, the respondent failed to provide an itemized list within 14 days and notify the tenants of their right to appeal to this board within 30 days of receipt. With that said, the Board is oft tasked with decision-making using a *lens of reasonableness*. While I am compelled to ultimately agree with the majority on this case, I felt that the respondent in this case made reasonable efforts to communicate with the tenants and made reasonable attempts to provide accurate repair costs given the extent of the damage. In my opinion, it should not go without consideration that the current labor shortage and high demand on the time of skilled vendors and contractors across our state, coupled with the sheer scale of damage as demonstrated in the extensive photographic evidence submitted by the respondent, that in some instances, 14 calendar days may simply not suffice in rare situations where documented efforts have been made to assess damage accurately, as well as communicate transparently and in good faith with

the tenants. I found that based on the evidence submitted by the respondent, which the tenants offered no rebuttal to, that the tenants demonstrated a wanton disregard for the respondent's property, which may very well exceed the amount of the deposit. It is my opinion that, based on the testimony and evidence, the tenants exploited the specificity of the ordinance despite being responsible for the damage. Ultimately, I concur with the Board's decision to return the security deposit based on failure to notify, and I concur with the Board's decision to retain jurisdiction over the case, based primarily on the filing timeline.

/s/ Evan Litwin
Evan Litwin



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: Juliette Fredericks
Rich Bassett

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

**In re: Request for Hearing of JULIETTE)
FREDERICKS, ERIN TEVNAN and)
JULIA HART Regarding Withholding of) Security Deposit Appeal
Security Deposit by RICH BASSETT)
for Rental Unit at 117 N. Winooski Ave.,)
Apartment A)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 19, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Charlie Gliserman, Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart were present and testified. Respondent Rich Bassett was also present and testified. Also appearing and testifying as witnesses were Maggie McCloskey and William Ward.

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 Rich Bassett is the owner of a rental unit, 117 N. Winooski Avenue, Apt. A, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart moved into the rental unit on June 1, 2020 under the terms of a written lease. The initial monthly rent was \$4,500.00.
3. Petitioners paid a security deposit of \$4,500.00 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 26, 2022.

5. On June 7, 2022, respondent sent, by certified mail, a hand-written statement to Maggie McCloskey (one of the former tenants who is not a party to these proceedings). The statement was not delivered to Ms. McCloskey but was sent back to respondent. Upon contacting respondent about the return of the deposit, respondent told petitioners he was away and that his mail was on hold until June 28. Respondent indicated he would track down the mail when he returned. Petitioners requested an update from respondent on several occasions and did not hear back from respondent until July 3, 2022.

6. On July 3, 2022, respondent, after finally receiving the returned mail, clipped the returned envelope on his mailbox for petitioners to pick up. However, when Maggie McCloskey went to pick up the envelope it was not clipped to the mailbox. Respondent assumed the postal carrier picked up the envelope to try to redeliver it. The parties stopped communicating after that.

7. None of the deposit was returned to petitioners. Respondent itemized damages of \$4,673.20; most of the damage stemmed from the loss of heat in the apartment in January 2022 and the resulting damage caused by the pipes freezing in the apartment. Respondent attributed the damage to petitioners because Julia Hart had unplugged the heaters provided by respondent to keep the apartment warm while the furnace was being repaired. Ms. Hart unplugged the heaters because she was concerned about leaving them plugged in and unattended, a potential safety hazard. William Ward, Director of Permitting and Inspections, testified that he would not recommend leaving electric heaters plugged in and unattended due to safety concerns. The Board finds that it was reasonable for Julia Hart to unplug the heaters out of concern for petitioners' rental unit, as well as other units in the building.

8. Respondent did not inform petitioners of their opportunity to request a hearing before this Board to dispute the withholding of the deposit.

9. Petitioners argued that the deposit was willfully withheld and requested double damages. The basis of petitioners' argument is that respondent stopped communicating with them about a way to get a copy of the statement sent on June 7, 2022. After the returned envelope was clipped to the mailbox and presumably picked up by the postal carrier to redeliver it, petitioners argue that respondent was satisfied to wait and see if the statement was delivered. Petitioners argue that respondent's actions evidence a lack of importance with respect to the return of the deposit, and consequently, evidence that the deposit was willfully withheld. When the parties were texting back and forth about the deposit, respondent did not inform petitioners that none of the deposit was being returned. Petitioners never thought the deposit would be withheld. Respondent denied that he willfully withheld the deposit; respondent attributed the damage from the frozen pipes to petitioners and withheld the deposit to cover those damages.

10. Respondent argued that petitioners did not file their request for a hearing on time, and therefore, the case should be dismissed.

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. Respondent argued that petitioners did not file their request for hearing on time. Upon receiving notice of a landlord's intent to withhold all or part of a security deposit, a tenant may request a hearing before this Board to determine the reasonableness of the landlord's deductions. Minimum Housing Code Sec. 18-120(e). The request must be submitted in writing within 30 days of receipt of notice of the opportunity to request a hearing or, in the absence of such notice, within 44 days of the date the tenant vacated the rental unit. Minimum Housing Code Sec. 18-120(e). Respondent did not provide petitioners with notice of their right to appeal the withholding of the deposit to this Board. In the absence of that notice, petitioners had 44 days from the date they vacated the apartment to file a request for hearing. Petitioners moved out on May 26, 2022. Petitioners filed their request for hearing on July 9, 2022 – exactly 44 days after they vacated the apartment. The Board concludes petitioners filed their request on time.

14. 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).

15. 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 provide petitioners with a statement informing them of their opportunity to request a hearing before this Board to dispute the withholding of their deposit. Therefore, the Board concludes that respondent forfeited the deposit.

16. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioner has also moved for double damages, alleging respondents' failure to return his security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Petitioners argued that respondent's lax attitude with respect to providing a withholding statement to them evidenced an indifference to the law, and thus, the willful withholding of the deposit. Respondent argued that he followed the law with respect to providing a statement to petitioners, he tried to get the

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

statement to them by leaving it clipped to his mailbox for Maggie McCloskey to pick up and he shouldn't be faulted for the post office's failure to deliver the statement to petitioners. Despite respondent's lack of communication with petitioners at times, the Board concludes there is insufficient evidence to show the deposit was willfully withheld.

17. 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.

18. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERED:

19. Petitioners Juliette Fredericks, Erin Tevnan and Julia Hart are entitled to recover from respondent Rich Bassett the following amounts:

a) \$4500.00 of the principal amount of the deposit improperly withheld after June 9, 2022;

b) Interest in the amount of \$22.75 on the entire deposit for the period June 1, 2020 to June 9, 2022; and

c) Additional interest of \$0.03 per day from June 10, 2022 until such date as the amount improperly withheld is returned to petitioners.

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/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor



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: Quinn Kimball
J&M Properties

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

**In re: Request for Hearing of QUINN)
KIMBALL Regarding Withholding of) Security Deposit Appeal
Security Deposit by J&M PROPERTIES)
for Rental Unit at 80 Front Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 19, 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 Quinn Kimball was present and testified. Respondent J&M Properties although notified of the hearing and the opportunity to be heard was not 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 J&M Properties is the owner of a rental unit, 80 Front Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Quinn Kimball and Kyle Weeden, Ryan Darling and Santiago Sanchez moved into the rental unit under the terms of a written lease. Monthly rent was \$3,000. Petitioner and each of his roommates paid \$750 to respondent for rent; they each sent their portion of the rent to Judith McLaurin by VENMO.
3. Petitioner and his former roommates paid a security deposit of \$3,000.00 to respondent. Petitioner was to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and his former roommates vacated the apartment on June 30, 2022.

5. On July 14, 2022, respondent sent each tenant an itemized list of deductions from the deposit in accordance with ordinance requirements. Said statement itemized deductions of \$2514.36 from the deposit. None of the deposit was returned to petitioner.

6. The only deduction disputed by petitioner is \$2150.00 for unpaid rent. Petitioner and his roommates paid monthly rent to respondent by means of VENMO. Petitioner submitted records indicating that rent was paid in full each month (though some payments were late).

7. Interest in the amount of \$0.24 was 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 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). Proper notice was provided.

11. Petitioner disputed the deduction for unpaid rent on the basis that rent was paid in full for each month of the tenancy. Petitioner provided VENMO records for himself and his former roommates showing payments for the entirety of the tenancy. There was no testimony or evidence to refute petitioner's testimony. Consequently, the Board concludes that the deduction for unpaid rent was not proper as rent was paid in full for the entire tenancy.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Quinn Kimball is entitled to recover from respondent J&M Properties the following amounts:

- a) \$2150.00 of the principal amount of the security deposit improperly withheld after July 14, 2022; and
- b) Additional interest of \$0.01 per day from July 15, 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/ Josh Wronski
Josh Wronski

/s/ Olivia Taylor
Olivia Taylor