



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 10/17/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Marcy Clare Cecil
Noah Paradis
Leigh Ann Cash
Don Harrington

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

**In re: Request for Hearing of MARY CLARE)
 CECIL, NOAH PARADIS and LEIGH ANN) CITY OF BURLINGTON
 CASH Regarding Withholding of) HOUSING BOARD OF REVIEW
 Security Deposit by DON HARRINGTON)
 for Rental Unit at 28 East Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 18, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Josh O'Hara and Alec Bauer were also present. Petitioners Mary Clare Cecil, Noah Paradis and Leigh Ann Cash were present and testified. Respondent Don Harrington, 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 Don Harrington is the owner of a rental unit, 28 East Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Mary Clare Cecil, Noah Paradis and Leigh Ann Cash moved into the rental unit with a lease which ran from June 1, 2017 to May 29, 2017.
3. Petitioners paid a security deposit of \$2100.00 to respondent; each of them paid \$700.00 by separate check 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 29, 2017.
5. On July 11, 2017, respondent sent petitioner Mary Clare Cecil a statement of deductions from the deposit. That statement itemized deductions totaling \$933.05. Interest in the amount of \$4.00 was credited to the deposit. Respondent returned \$1170.95 of the deposit to petitioners by one check made

payable to all of them, even though petitioners had requested separate checks and the deposit was paid to respondent in separate checks.

6. Petitioners disputed the deductions and the timeliness of the notice. In addition, petitioners argued that respondent willfully withheld the deposit; the basis of their claim was that respondent knew the law about the return of the deposit, and therefore, the failure to return it in a timely manner was willful. In a series of emails between Mary Clare Cecil and respondent, the parties discussed the return of the deposit; on June 27, 2017 respondent wrote that a check had been sent out on June 1. However, on June 28, the parties discovered that respondent had sent the check to the wrong address whereupon petitioners requested that a new check be sent to the correct address.¹ On July 11, 2017, a new check was sent to petitioner Marcy Clare Cecil at the correct address.

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

¹ The Board notes that the emails submitted by petitioner may not be complete since some of the exchanges seem a bit out of context.

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). If the failure is willful, the landlord shall be liable for double the amount wrongfully withheld. 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.² *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 petitioners within 14 days of the date they moved out. The evidence before the Board indicates a check and statement were sent to petitioners on July 11, 2017. 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). Petitioners argued that the withholding of the deposit was willful on the basis of respondent's failure to return the deposit when he knew the law and understood it. Although respondent did not appear at the hearing, there is evidence indicating he was responsive when petitioners informed him that the check was sent to the wrong address. Therefore, the Board concludes the failure to return the deposit within 14 days was not willful.

² An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioner Mary Clare Cecil is entitled to recover from respondent Don Harrington the following amounts:

- a) \$311.02 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

13. Petitioner Noah Paradis is entitled to recover from respondent Don Harrington the following amounts:

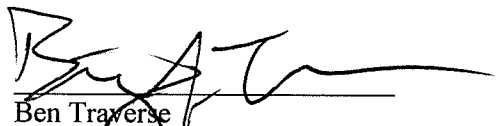
- a) \$311.02 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

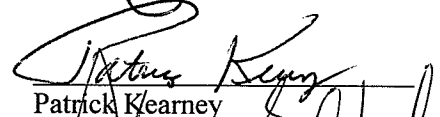
14. Petitioner Leigh Ann Cash is entitled to recover from respondent Don Harrington the following amounts:

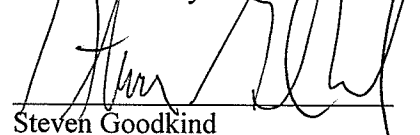
- a) \$311.01 of the principal amount of the deposit improperly withheld after June 12, 2017; and
- b) Additional interest of \$0.002 per day from June 13, 2017 until such date as the amount improperly withheld is returned.

Dated at Burlington, Vermont this 17th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

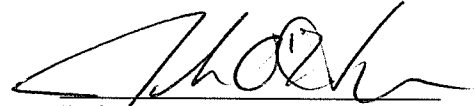

Ben Traverse


Patrick Kearney


Steven Goodkind

A handwritten signature in black ink, appearing to read 'Alec Bauer', written over a horizontal line.

Alec Bauer

A handwritten signature in black ink, appearing to read 'Josh O'Hara', written over a horizontal line.

Josh O'Hara



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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 10/17/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: John Kanto
Hickok Place Trust

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

In re: Request for Hearing of JOHN KANTO)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by HICKOK PLACE TRUST for) HOUSING BOARD OF REVIEW
Rental Unit at 23 Hickok Place)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 18, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Josh O'Hara and Alec Bauer were also present. Petitioner John Kanto was present and testified. Respondent Hickok Place Trust was represented at the hearing by Philip Aaron and Keith Aaron both of whom testified. Also appearing and testifying were Scarlett Molody, Ed Rich and Amy Domer.

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 Hickok Place Trust is the owner of a rental unit, 23 Hickok Place, in the City of Burlington which is the subject of these proceedings. Philip Aaron and Keith Aaron manage the property.
2. Petitioner John Kanto and 4 others moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017. Monthly rent was \$3850.00.
3. Petitioner and his roommates paid a security deposit of \$3850.00 to respondent. Petitioner and his roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 25, 2017.
5. On June 2, 2017, respondent sent a written statement to petitioner itemizing deductions from the deposit, in accordance with ordinance requirements. Said statement itemized deductions totaling \$4,027.59. Interest in the amount of \$77.00 was credited to the deposit.

6. Both parties testified with respect to the deductions for cleaning: \$430.70 to steam clean the rugs, \$600.00 to have the house professionally cleaned and \$100.00 to clean and polyurethane the wood floors. Petitioner cleaned what he thought needed to be cleaned; he did not know why there was a deduction for the wood floor. The lease required the tenants to clean the premises, floors and carpets. Further, the lease provided that the landlord had the right to hire cleaning services, at the tenants' cost, if the unit (including the floors and carpet) was not kept clean. The condition of the house was such that it required cleaning: there was food everywhere, the kitchen and bathroom were dirty, the carpet was dirty and smelled of beer and the wood floor had a blue stain on it. Amy Domer, the person who cleaned the house, described its condition as disgusting and trashed; she spent a total of 24 hours cleaning the house. Photos of the condition of the house after petitioner moved out demonstrate the absolute need to have it cleaned. The cleaning charges were supported by receipts for the work.

7. Both parties testified with respect to the deduction of \$1,320.00 for repairing and painting walls in the unit. Petitioner disputed the deduction because he believed he was being charged to paint the entire house; he acknowledged 3 walls were damaged by him and his roommates. Petitioner was only charged to repair and paint the walls damaged by the tenants. There were holes in the walls, stains on the walls and graffiti on the walls, all of which needed to be repaired and painted. Photos submitted by respondent evidence the extent of the damage. Ed Rich spent 3 days in the house repairing the walls and painting; he charged respondent \$1320.00 for his work.

8. Both parties testified with respect to the deduction of \$1,075.93 for unpaid water bills. Petitioner testified he was unaware that he was responsible for paying for water. The lease clearly states the tenants are responsible for paying all the utilities, including water. When the water bills were not paid by petitioner, respondent paid them. The printout supplied by the water department confirm the charges for water were \$1,075.93.

9. Both parties testified with respect to the deduction of \$326.65 to remove furniture. Petitioner left furniture outside the house which needed to be removed.

10. Other deductions from the deposit were not disputed.

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. 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). Timely and proper notice was provided.

14. Based on the evidence and testimony, the Board concludes all the deductions were reasonable. Petitioner and his roommates caused damage in the apartment which needed to be repaired and left the house in need of extensive cleaning; the damages were well beyond what was attributable to normal wear and tear.

ORDER

Accordingly, it is hereby ORDERED:

15. Petitioner John Kanto's request for relief is DENIED.

Dated at Burlington, Vermont this 17th of October, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



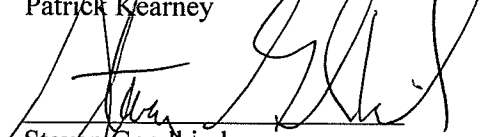
Ben Traverse



Josh O'Hara



Patrick Kearney



Steven Goodkind



Alec Bauer



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DATED 10/17/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Christine Hart
Jonathan Heller

**In re: Request for Hearing of CHRISTINE)
HART Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JONATHAN) HOUSING BOARD OF REVIEW
HELLER for Rental Unit at 81 Dunder Rd)**

The above-named hearing came before the Housing Board of Review on September 18, 2017. Board Chair Ben Traverse presided. Board Members Josh O’Hara, Patrick Kearney, Steven Goodkind and Alec Bauer were also present. Petitioner Christine Hart was present and testified. Respondent Jonathan Heller was also present and testified.

FINDINGS OF FACT

- At 12:13 am: I am unable to return your security deposit as it will go towards the 15 day period of notice. This we both agreed upon. I apologize for any inconvenience. I have witnesses that your statements are completely fabricated please don't bother*

At 7:49:21 am: I'm finding a lot of damage in your room and around the house I think you will need to pay me

At 7:49:59 am: I will have an itemize list within 14 days

At 12:06:23 pm: I decided it's not worth the fight send me your address I will send you a check

After respondent agreed to return the deposit, petitioner provided her forwarding address to him.

6. After the exchange of emails, the parties then exchanged text messages about the deposit.

Respondent indicated he was not financially able to return the deposit in full and asked for additional time to return the deposit. Petitioner requested that the deposit be mailed to her by July 9, 2017 in accordance with his responsibility to return the deposit within 14 days.

7. On July 10, 2017, petitioner emailed respondent again to find out if the deposit had been returned. Respondent replied he would not have the money until August 1.

8. On July 9, 2017, petitioner sent a demand letter to respondent requesting that she receive her deposit of \$300.00 no later than July 24, 2017. The deposit was not returned. On July 25, 2017, petitioner filed her request for hearing before this Board.

9. On September 13, 2017, respondent returned \$66.97 of the deposit to petitioner. Interest was not credited to the deposit.

10. Petitioner argued that respondent's failure to return the deposit within 14 days was willful as he was informed that he was required to return the deposit with a statement within 14 days. In addition, respondent agreed to return the deposit in full, but did not do so. Respondent testified that he only noticed damages after he agreed to return the deposit. The Board notes that respondent's testimony on this point is inconsistent with the email messages he sent to petitioner on June 27, 2017.

11. Respondent did not provide notice to petitioner of her right to dispute the withholding of the deposit to this Board.

CONCLUSIONS OF LAW

12. 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.

13. 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.

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. 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). If the failure is willful, the landlord shall be liable for double the amount wrongfully withheld. 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

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

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 within 14 days of the date she moved out, by failing to provide an itemized statement of deductions within 14 days and by failing to provide notice of petitioner's right to appeal to the this Board. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

16. 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 was willful: he was informed of his obligation to return the deposit within 14 days and he agreed to return the deposit, but he failed to do so. Finally, on September 13, 2017, respondent returned only a portion of the deposit - \$66.97 - to petitioner. The Board concludes the failure to return the deposit was willful.

17. 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:

18. Petitioner Christine Hart is entitled to recover the following amounts from respondent Jonathan Heller:

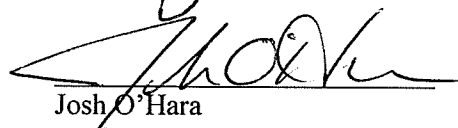
- a) \$466.06, double the amount of the deposit willfully withheld after July 9, 2017;
- b) Interest in the amount of \$0.29 on the entire deposit for the period April 20, 2017 to September 13, 2017; and

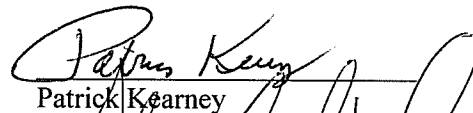
c) Additional interest of \$0.003 per day from September 14, 2017 until such date as the amount improperly withheld is returned to petitioner.

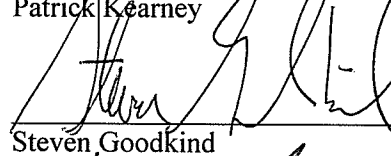
Dated at Burlington, Vermont this 17th of October, 2017.

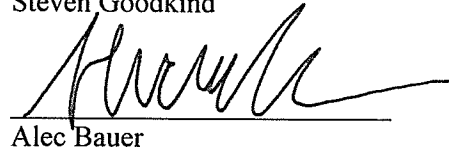
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Ben Traverse


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