

BURLINGTON HOUSING BOARD OF REVIEW
Tuesday, September 7, 2021, 7:00 p.m.
PUBLIC HEARING NOTICE

Physical location: Sharon Bushor Conference Room, City Hall, 1st Floor, Burlington, VT

Zoom: <https://us02web.zoom.us/j/88475139050>

Webinar ID: 884 7513 9050

Telephone: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or
+1 669 900 6833 or +1 253 215 8782

International numbers available: <https://us02web.zoom.us/u/ke6Sbbvry>

AGENDA

1. Mallory Craig (tenant); Macson Endeavors LLC/Neville Companies (landlord) (security deposit case) re: 188 Cliff St, #6 (continuation of hearing from 7/19/21 to take additional evidence on tenant's claim of willful withholding of deposit) (rescheduled from 8/23/21)
2. Jamison Tuch, Lily Carr, Spencer Weingord (tenants); Susan Linnell (landlord) (security deposit case) re: 241 S. Winooski Ave, #2
3. Marcie Gallagher, Graham Tuck (tenants); Sisters & Brothers Investment Group (landlord) (security deposit case) re: 371 Pearl St, #4
4. Caroline O'Shea, Theresa Noonan, Lexi Sutyak, Alli Pratt (tenants); Full Circle Properties (landlord) (security deposit case) re: 279 Colchester Ave
5. William Davis, Cynthia Crowley, Austin Van Dyke (tenants); Gerald LeClair (landlord) (security deposit case) re: 86 N. Winooski Ave.

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: Josh O'Hara (Chair) and Olivia Taylor (in person); Charlie Gliserman and Evan Litwin (via Zoom).

Staff present: Lisa Jones

1. Mallory Craig (tenant); Macson Endeavors LLC/Neville Companies (landlord) (security deposit case) re: 188 Cliff St, #6 (continuation of hearing from 7/19/21 to take additional evidence on tenant's claim of willful withholding of deposit) (rescheduled from 8/23/21) Josh O'Hara did not take part in the hearing as he was not present for the original hearing on July 19, 2021. Charlie Gliserman presided over this hearing. Present were Mallory Craig, David Budnick and Coty Fitzgerald; all parties were sworn in. Additional evidence on the claim of willful withholding of the deposit was taken from both parties. Hearing was concluded.
2. Jamison Tuch, Lily Carr, Spencer Weingord (tenants); Susan Linnell (landlord) (security deposit case) re: 241 S. Winooski Ave, #2
This case was postponed at the request of the tenant and rescheduled for Sept. 20, 2021.
3. Marcie Gallagher, Graham Tuck (tenants); Sisters & Brothers Investment Group (landlord) (security deposit case) re: 371 Pearl St, #4
Present were Graham Turk (via Zoom) and Mac Stevens. All parties were sworn in. Evidence and testimony was taken from both parties and the hearing concluded.
4. Caroline O'Shea, Theresa Noonan, Lexi Sutyak, Alli Pratt (tenants); Full Circle Properties (landlord) (security deposit case) re: 279 Colchester Ave
This case was settled prior to the hearing and dismissed.
5. William Davis, Cynthia Crowley, Austin Van Dyke (tenants); Gerald LeClair (landlord) (security deposit case) re: 86 N. Winooski Ave.
No parties were present at the hearing. Chair O'Hara dismissed the case.



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 9/29/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Mallory Craig
Macson Enterprises c/o Neville Companies

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

**In re: Request for Hearing of MALLORY)
CRAIG Regarding Withholding of) Security Deposit Appeal
Security Deposit by MACSON)
ENTERPRISES LLC for Rental Unit at)
188 Cliff Street, #6)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 19, 2021 and was continued on September 7, 2021. Board Member Charlie Gliserman presided over the hearing on September 7, 2021 and was present at the hearing on July 19, 2021. Board Members Olivia Taylor and Evan Litwin¹ were also present at both hearings. Petitioner Mallory Craig was present and testified. Respondent Macson Enterprises LLC was represented at the hearings by Coty Fitzgerald who testified. Also appearing and testifying as a witness was David Budnick.

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 Macson Enterprises LLC is the owner of a rental unit, 188 Cliff St, Unit 6, in the City of Burlington which is the subject of these proceedings. Coty Fitzgerald from Neville Companies (a property management company) manages the property.
2. Petitioner Mallory Craig moved into the rental unit with a written lease which ran from October 1, 2020 to September 24, 2021. Monthly rent was \$910.00.
3. Petitioner paid a security deposit of \$910.00 and a pet deposit of \$455.00 (a total of \$1365.00) to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

¹ Evan Litwin attended the hearing on September 7, 2021 remotely.

4. Petitioner vacated the apartment on May 19, 2021.

5. On May 26, 2021, respondent sent a written statement to petitioner in accordance with ordinance requirements. Said statement itemized one deduction from the deposit: \$128.00 for a lock out charge from April 21, 2021. Interest in the amount of \$0.93 was credited to the deposit; respondent also returned \$352.20 for rent reimbursement. Respondent returned a total of \$1590.13 (\$1237.93 in deposit monies and \$352.20 for reimbursement of rent) to petitioner.

6. Petitioner disputed the deduction of \$128.00 and argued that the failure to return that money was willful. The deduction stemmed from an incident on March 29, 2021 at approximately 5:45 p.m. when petitioner was locked out of the apartment. She called Neville Companies and they sent a maintenance person to the apartment to let her into it. The next morning petitioner emailed Coty Fitzgerald and requested a new key to the apartment as she was unable to find hers; Mr. Fitzgerald responded that they would make a new key for her and the charge for it was \$25.00. Petitioner paid the charge on May 4, 2021.

7. In April, Neville Companies sent an invoice to petitioner indicating that she owed them \$267.51 stemming from being locked out of her apartment. The statement indicated there was a charge of \$197.51 (labor and mileage reimbursement) for the maintenance call on March 29 and a charge of \$70.00 (labor and mileage reimbursement) to deliver the replacement key to her. Petitioner had not yet paid the \$25 charge for the new key when the invoice was sent.

8. Upon receiving the invoice for lock out charges, petitioner called Coty Fitzgerald about the charges; petitioner disputed the charges as she had been told that the cost to replace the key was \$25.00. Mr. Fitzgerald explained the charges as being the hourly fee noted in the lease (\$64.00) to respond to the maintenance call and the cost of the key (which petitioner had not yet paid). In addition, Coty Fitzgerald explained that since the maintenance call occurred after

hours, the call was billed at a higher “after hours” hourly rate of \$96.00 (time and a half). In a follow-up email to petitioner on April 28, Mr. Fitzgerald confirmed the hourly charges; in addition, he told petitioner that if she was unable to make the payment, it would be deducted from her security deposit. In an email dated May 5, 2021 to Coty Fitzgerald, petitioner disputed the charges again and argued that withholding the charges from her deposit was not proper under city ordinance.

9. Petitioner and Coty Fitzgerald had additional back and forth exchanges about the lock out charges. Finally, in an email to petitioner dated May 6, 2021, Mr. Fitzgerald stated the lock out charge would be reduced to \$128 (2 hours of labor at \$64/hour as provided in the lease) and \$25 for the replacement key. Petitioner paid the \$25 charge for the replacement key, but did not pay the charge for labor.

10. Petitioner argued that respondent willfully withheld \$128 from the deposit. Petitioner argued that Coty Fitzgerald knew there was no provision in the lease allowing for a higher rate of charge for after-hours maintenance calls, even though he initially told her there was. Coty Fitzgerald denied the withholding of the deposit was willful. Rather, he believed the deduction was appropriate because it was a fee that was supposed to be paid directly to respondent, but wasn't. In addition, when petitioner pointed out that there was no provision in the lease for a higher hourly rate for after-hour maintenance calls, he acknowledged the error and adjusted the charge. The Board finds Coty Fitzgerald's testimony that he believed the deduction was allowed under the city ordinance and that he made an honest error with respect to the hourly rate of charge to be convincing.

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). Proper notice was provided.

14. Under city ordinance an owner can retain all or part of a deposit for the actual cost to repair damage beyond normal wear and tear, for unpaid rent, for nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility, and for expenses required to remove abandoned articles from the rental unit. Minimum Housing Code Sec. 18-120(c). Based on the evidence and testimony, the Board concludes that the deduction of \$128.00 was not a damage as contemplated under city ordinance, and thus, will not allow it.

15. 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 respondent's withholding of \$128 from her 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). Petitioner argued that Coty Fitzgerald knew the lease did not contain a higher hourly rate of charge for after-hours maintenance calls and knew the charge was not proper, but deducted money from her deposit for the maintenance call anyway; she argues that his actions demonstrate a willful withholding of the deposit. Coty Fitzgerald provided credible testimony that he believed the deduction to be proper under the ordinance and that he made a mistake with regard to the hourly rate of charge for the maintenance call. Consequently, the Board concludes that the withholding of part of the deposit was not willful; therefore, we will not award double damages.

Order

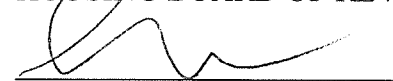
Accordingly, it is hereby ORDERED:

16. Petitioner Mallory Craig is entitled to recover from respondent Macson Enterprises LLC the following amounts:

- a) \$128.00 of the deposit improperly withheld after June 2, 2021; and
- b) Additional interest of \$0.0009 per day from June 3, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 29th day of September, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor



HOUSING BOARD OF REVIEW

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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 9/29/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Marcie Gallagher
Graham Turk
Sisters & Brothers Investment Group

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

In re: Request for Hearing of GRAHAM)
 TURK and MARCIE GALLAGHER)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by SISTERS & BROTHERS)
 INVESTMENT GROUP for Rental Unit)
 At 371 Pearl Street, #4)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on September 7, 2021. Board Chair Josh O'Hara presided. Board Members Josh O'Hara and Olivia Taylor were present; Board Members Charlie Gliserman and Evan Litwin attended the hearing remotely. Petitioner Graham Turk, who attended the hearing remotely, testified. Respondent Sisters and Brothers Investment Group was represented at the hearing by Mac Stevens who appeared in person 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 Sisters and Brothers Investment Group is the owner of a rental unit, 371 Pearl Street, #4, in the City of Burlington which is the subject of these proceedings. Mac Stevens is the property manager; petitioners were already living in the unit when Mr. Stevens began managing the property.

2. Petitioners moved into the rental unit with a written lease which ran from September 1, 2018 to August 31, 2019. On January 1, 2021, petitioners signed a written, month-to-month lease. Monthly rent was \$2100.00.

3. Petitioners paid a security deposit of \$2100.00 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 June 1, 2021.

5. On June 14, 2021, respondent sent a statement via certified mail to Marcie Gallagher in accordance with ordinance requirements. Said statement itemized deductions of \$142.00 from the deposit. Interest in the amount of \$5.25 was credited to the deposit. Respondent returned \$1,963.25 of the deposit to petitioners.

6. In addition to disputing the deductions for steam cleaning the carpet and removing chairs, petitioners argued that the deposit was not sent in a timely manner because they did not receive it until after June 18, 2021 (the date the postal service first tried to deliver the mail to Marcie Gallagher). Documents submitted by both parties indicate the itemized statement and check were mailed on June 14, 2021.

7. Both parties testified with respect to steam cleaning the carpet which appeared as a \$100 deduction on the itemized statement. Petitioners argued that cleaning the carpet is part of normal wear and tear, particularly since they lived in the unit for almost 3 years. In addition, Graham Turk surmised that if there was damage to the carpet, it was probably a result of some ceiling damage which occurred in 2020. Mac Stevens testified the deduction was a result of paint splashes on the carpet in one of the bedrooms. Graham Turk testified he did not remember seeing any paint on the carpets. Mac Stevens testified that there was an addendum to the lease with the schedule of charges to be deducted from the security deposit should there be damages in the unit; the charge to steam clean the carpet is \$100.00. Mr. Stevens did not know whether or not petitioners received the addendum.

8. Both parties testified with respect to the deduction of \$30.00 to remove 2 chairs from the unit. The deduction covered the cost to dispose of the chairs, as well as the time it took to dispose of them. Graham Turk testified the chairs were left in the unit because the new tenants wanted them. Mac Stevens told Marcie Gallagher that he would need a written statement from the new tenant(s) indicating they wanted the chairs left in the apartment. Mr. Stevens did not receive a statement from the new tenant(s) and he disposed of the chairs.

Conclusions of Law

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail 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). Petitioners disputed the timeliness of the notice of withholding because they did not receive the notice until after 14 days. However, state law and city ordinance are both clear that notice must be sent – not received - within 14 days of the vacate date. Respondent mailed the statement on June 14, 2021 – 13 days after petitioners vacated the unit. Timely notice was provided.

12. Petitioners disputed the deductions for steam cleaning the carpet and for disposing of 2 chairs. Based on the evidence and testimony presented, the Board concludes the deduction for steam cleaning the carpet was not proper; the deduction did not reflect the actual cost to steam clean the carpet, but was a flat fee. With respect to the deduction to remove 2 chairs from the unit, the Board concludes the deduction was proper. Mac Stevens told Marcie Gallagher she would need to provide a written statement from the new tenants if they wanted the chairs to remain in the apartment; she did not do so. The \$30 deduction was the actual cost to dispose of the chairs.

Order

Accordingly, it is hereby ORDERED:

13. Petitioners Marcie Gallagher and Graham Turk are entitled to recover from respondent Sisters and Brothers Investment Group the following amounts:

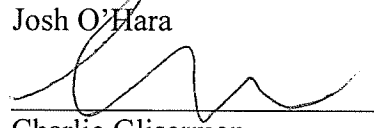
- a) \$100 of the principal amount of the security deposit improperly withheld after June 15, 2021; and
- b) Additional interest of \$0.0007 per day from June 16, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this ^{4th} 29 day of September, 2021.

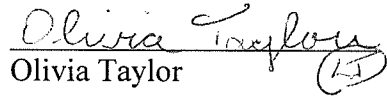
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

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

Charlie Gliserman

A handwritten signature in black ink, appearing to read 'Olivia Taylor', written over a horizontal line. To the right of the signature is a small circular stamp containing the number '15'.

Olivia Taylor

/s/ Evan Litwin

Evan Litwin