



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 9/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Mattie Hayes
Phyllis Galanthay

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

**In re: Request for Hearing of MATTIE HAYES)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by PHYLLIS) HOUSING BOARD OF REVIEW
GALANTHAY for Rental Unit at 37 So.)
Williams Street, Unit 218)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioner Mattie Hayes was present and testified. Respondent Phyllis Galanthay testified via telephone conference call.

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 Phyllis Galanthay is the owner of a rental unit, 37 So. Williams Street, Unit 218, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Mattie Hayes moved into the rental unit with a lease which ran from June 1, 2015 to May 31, 2016. Monthly rent was \$1550.18.
3. Petitioner paid a security deposit of \$1550.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 25, 2016.
5. On June 17, 2016, respondent sent a statement to petitioner informing her that part of the deposit was being withheld. Interest was not credited to the deposit. Respondent did not return the deposit sooner because she did not have petitioner's complete forwarding address (the street name was missing). Respondent returned \$1,146.15 of the deposit to petitioner at that time. On June 25, 2016, respondent returned an additional \$85.70 to petitioner.

6. Respondent's statement did not inform petitioner of her right to request a hearing before this Board to dispute the withholding of her deposit.

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 mailed to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address has been provided. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

10. A landlord who decides to retain all or part of a security deposit must comply with 3 specific requirements of the ordinance: the deposit must be returned within 14 days of the date the tenant vacated or abandoned the rental unit with a written statement itemizing any deductions; the statement must contain notice of the tenant's right to appeal to the Housing Board of Review; and the statement must be

hand-delivered or sent by certified mail.¹ See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum Housing Code Sec. 18-120(c). The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). Accordingly, a landlord who fails to meet all of these requirements forfeits the security deposit. In this case, respondent failed to comply with the notice requirements by failing to return the deposit with a statement within 14 days of the date petitioner moved out of the unit 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. 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:

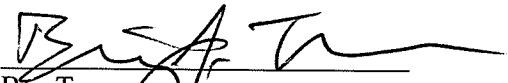
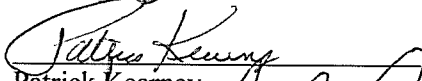
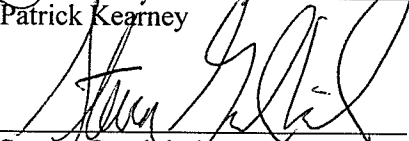
12. Petitioner Mattie Hayes is entitled to recover from respondent Phyllis Galanthay the following amounts:

- a) \$318.15 of the principal amount of the security deposit improperly withheld after June 8, 2016;
- b) Interest in the amount of \$3.94 for the period June 1, 2015 through June 8, 2016; and
- c) Additional interest of \$0.002 per day from June 9, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of September, 2016.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Steven Goodkind



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

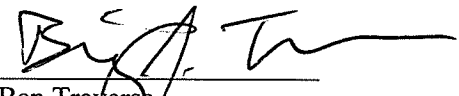
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Edward Kammerer & Nicholas Wahlers
Jean Moody

**In re: Request for Hearing of EDWARD)
KAMMERER and NICHOLAS WAHLERS)
Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JEAN MOODY) HOUSING BOARD OF REVIEW
for Rental Unit at 62 Intervale Ave, #2)**

The above-named hearing came before the Housing Board of Review on September 6, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioners Edward Kammerer and Nicholas Washlers were present and testified. Respondent Jean Moody was also present and testified. Also present was Steve Richard.

FINDINGS OF FACT

- 1

forward.” Upon receiving notice that petitioners had filed a request for hearing before this Board, respondent called the Board to get petitioners’ current mailing addresses. She then re-sent the statements and checks on June 21, 2016.

6. The statement itemized deductions totaling \$126.00. Respondent returned \$401.33 to Edward Kammerer, and \$391.33 to Nicholas Wahlers. Interest was not credited to the deposit. Respondent’s statement did not inform petitioners of their right to request a hearing before this Board to dispute the withholding of their deposits.

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 mailed to the last known address of the tenant. 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 include petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. 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.

12. At hearing, petitioners further claimed that respondent's failure to properly return their security deposit was "willful." If that were the case, petitioners may be entitled to collect double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). It is clear from the evidence, however, that respondent did not withhold any portion of petitioners' deposit in bad faith and that she acted with due diligence to return that amount she believed was owed to them. Accordingly, petitioners' claim for double damages is denied.

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

ORDER

Accordingly, it is hereby ORDERED:

13. Petitioner Edward Kammerer is entitled to recover from respondent Jean Moody the following amounts:

a) \$38.67 of the principal amount of the security deposit improperly withheld after June 14, 2016; and

b) Interest in the amount of \$2.21 for the period September 1, 2014 through September 6, 2016.

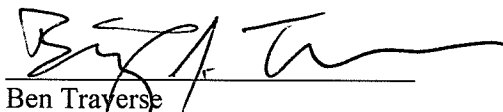
13. Petitioner Nicholas Wahlers is entitled to recover from respondent Jean Moody the following amounts:

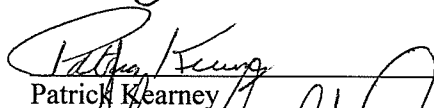
a) \$48.67 of the principal amount of the security deposit withheld after June 14, 2016; and

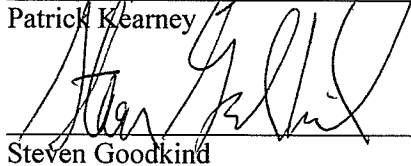
b) Interest in the amount of \$1.11 for the period September 1, 2015 through September 6, 2016.

DATED at Burlington, Vermont this 20th day of September, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind



HOUSING BOARD OF REVIEW

City of Burlington

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

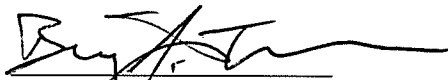
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DATED 9/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Afua Mbrow
Chris Mason

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

**In re: Request for Hearing of AFUA MBROW,)
OLIVIA WOJTENKO, BRENNA)
GILHOOLEY and JAKE DAHLDOFF) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by CHRIS MASON for Rental)
Unit at 37 Decatur Street, #3)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 6, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Steven Goodkind were also present. Petitioners Afua Mbrow, Olivia Wojtenko and Brenna Gilhooley were present and testified. Respondent Chris Mason was also present and testified. Also present and testifying were Jessica Bridge and Kevin Hivv.

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 Chris Mason is the owner of a rental unit, 37 Decatur Street, #3, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Afua Mbrow, Jake Dahldorf, Olivia Wojtenko and Brenna Gilhooley moved into the rental unit with a lease which ran from May 1, 2015 to May 29, 2016. Monthly rent was \$2,150.00.
3. Petitioners paid a security deposit of \$2,150.00 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 by May 29, 2016; the keys were returned on that date.
5. On June 7, 2016, respondent sent a statement, by certified mail, to petitioners in conformance with ordinance requirements. The statement itemized deductions totaling \$3,470.55. Interest in the amount of \$2.16 was credited to the deposit. Petitioners disputed the reasonableness of the charges, believing they were inflated.

6. Both parties testified concerning the replacement of the carpet which appeared as a \$911.12 deduction on the itemized statement. Essex Paint and Carpet estimated the cost to replace the carpet is \$911.12; the estimate includes a new pad, installation, and disposal of the old carpet. The unit was completely renovated prior to the date on which petitioners moved into it; petitioners were the first occupants since the renovation. At the end of the tenancy there were numerous stains and burns on the carpet in one of the bedrooms. The stains were not removed by cleaning the carpet. Respondent did not have time to replace the carpet before new tenants moved into the unit, but plans on replacing it when the current tenants move out (approximately May 2017). Respondent expects a carpet to last 8-10 years. Normally, respondent would depreciate the cost, but he did not do so in this case because the carpet was only 1 year old when it was damaged. The estimate for the carpet includes a new pad which respondent indicated should not need to be replaced.

7. Both parties testified concerning damage to the hardwood floors which appeared as a \$750.00 deduction on the itemized statement. A 2' x 4' section of the flooring has gouges in it caused by the metal frame of petitioners' futon sofa. Respondent testified that the extent of the damage is such that the flooring needs to be completely replaced, and he received an estimate of \$750.00 from Essex Paint and Carpet to replace the damaged flooring.

8. Both parties testified concerning patching and painting walls which appeared as a \$741.00 deduction on the itemized statement. Several walls in the apartment were patched and painted due to holes in them, as well as tears in the drywall. Kevin Hivv claimed that he spent 16 hours patching and painting.

9. Both parties testified concerning refinishing the tub which appeared as a \$450.00 deduction on the itemized statement. The tub and surrounding area appears to have been stained blue and pink from hair dye. Respondent was unable to completely remove the stains through cleaning so the tub will need to be professionally refinished. The deduction is consistent with estimates that petitioners received so they did not dispute the reasonableness of the charge.

10. Both parties testified concerning cleaning charges which appeared as a \$502.00 deduction on the itemized statement. Petitioners were charged for 12 hours of cleaning at a rate of \$38.50/hour plus \$40 for cleaning supplies. Petitioners disputed that the apartment needed 12 hours of cleaning because they cleaned the apartment before moving out. Photos submitted into evidence by respondent indicate the apartment was reasonably clean after petitioners moved out.

11. The deduction for 'utility balance' was not disputed.

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 mailed to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address has been 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.

15. Based on the evidence, the Board concludes the carpet needs to be replaced, the walls needed some patching and painting, the tub needs to be refinished and additional cleaning needed to be done. However, with the exception of the deduction for the tub, the Board finds the amount deducted was unreasonable. The Board concludes reasonable deductions are as follows:

- \$656.46 for the carpet. When the carpet is replaced, it will be 2-years-old; therefore, based on a life of 8 years, the cost of the new carpet (\$539.28) should be depreciated by 25%. In addition, the cost of the pad should not be included as respondent indicated it would not need to be replaced.
- \$370.00 for patching and painting beyond what was attributable to normal wear and tear
- \$450.00 for refinishing the tub
- \$251.00 for cleaning (including half the cost of supplies) beyond what was attributable to normal wear and tear

16. Furthermore, the Board agrees with Respondent that a section of the rental unit's wood flooring is damaged beyond normal wear and tear. Based on the evidence, however, the Board concludes it is unnecessary to replace the flooring in its entirety. A reasonable cost to repair the damaged flooring is \$200.00.

17. A utility balance of \$116.43 is not in dispute.

ORDER

Accordingly, it is hereby ORDERED:

18. Petitioner Afua Mbrow (on behalf of all petitioners)¹ is entitled to recover from respondent Chris Mason the following amounts:

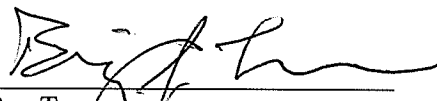
- a) \$108.27 of the principal amount of the deposit improperly withheld after June 12, 2016; and

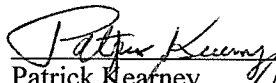
¹ At the hearing, petitioners agreed that the decision and any money ordered to be returned to them, would go to Afua Mbrow and she would distribute any returned monies accordingly.

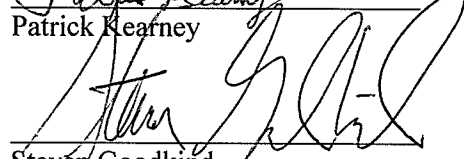
b) Additional interest of \$0.001 per day from June 13, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of September, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Steven Goodkind