



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

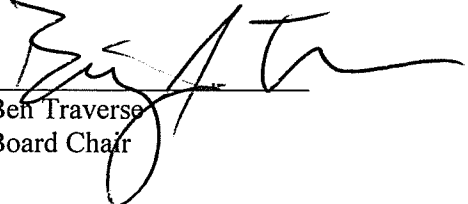
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/19/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Darren Clarke & Jane Yager
Thomas Dowd III

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

**In re: Request for Hearing of Darren Clarke)
And Jane Yager Regarding Withholding) CITY OF BURLINGTON
Of Security Deposit by Thomas Dowd III) HOUSING BOARD OF REVIEW
For Rental Unit at 57 West Road)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Alec Bauer were also present. Petitioners Darren Clarke and Jane Yager were represented at the hearing by Kirk Clarke¹ who testified. Respondent Thomas Dowd III was 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 Thomas Dowd III is the owner of a rental unit, 57 West Road, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Darren Clarke and Jane Yager moved into the rental unit with a lease which ran from June 1, 2015 to May 31, 2016; thereafter, they rented on a month-to-month basis.
3. Petitioners paid a security deposit of \$2500.00 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, 2017.
5. On June 14, 2017, respondent returned \$1627.50 of the deposit to petitioners along with a statement itemizing deductions taken from the deposit. The written statement did not inform petitioners of their right to appeal the withholding of the deposit to this Board.
6. Interest was not credited to the security deposit.

¹ Kirk Clarke is the father of petitioner Darren Clarke. Although not required by this Board, Mr. Clarke provided a copy of Darren Clarke's power of attorney indicating Kirk Clarke is authorized to act on Darren Clarke's behalf.

CONCLUSIONS OF LAW

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

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

9. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Timely notice was provided.

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

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

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 petitioners' 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.

ORDER

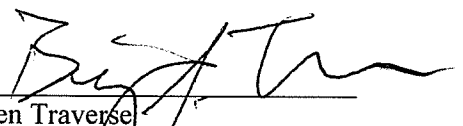
Accordingly, it is hereby ORDERED:

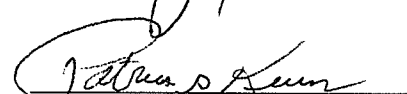
12. Petitioners Darren Clarke and Jane Yager are entitled to recover from respondent Thomas Dowd III the following amounts:

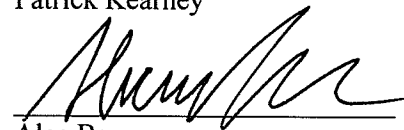
- a) \$872.50 of the principal amount of the deposit withheld after June 15, 2017;
- b) Interest in the amount of \$12.78 for the period June 1, 2015 through June 15, 2017; and
- b) Additional interest of \$0.02 per day from June 16, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 19th of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Alec Bauer



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

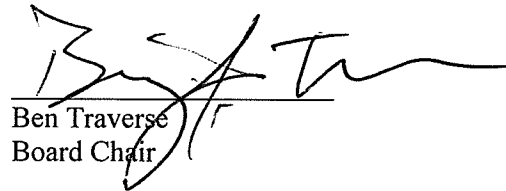
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Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

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

DATED 9/19/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Josiah Wall & Alden Clements
Foxden Properties

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

**In re: Request for Hearing of Josiah Wall and)
Alden Clements Regarding Withholding) CITY OF BURLINGTON
Of Security Deposit by Foxden) HOUSING BOARD OF REVIEW
Properties for Rental Unit at 407)
College Street, Apt. 4)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Alec Bauer were also present. Petitioners Josiah Wall and Alden Clements were present and testified. Respondent Foxden Properties was represented at the hearing by Michael Johnson who 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 Foxden Properties is the owner of a rental unit, 407 College Street, Apt. 4, in the City of Burlington which is the subject of these proceedings. Michael Johnson manages the property.
2. Petitioners Josiah Wall and Alden Clements moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017.
3. Petitioners paid a security deposit of \$1500.00 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 27, 2017.
5. On June 7, 2017, respondent mailed a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions totaling \$480.00. Interest in the amount of \$10.50 was credited to the deposit. Respondent returned \$1030.50 of the deposit to petitioners.
6. Both parties testified with respect to painting done in the apartment which appeared as a \$350.00 deduction on the itemized statement. Typically at the end of tenancy, respondent's painter will go

through an apartment and touch-up the walls with paint where necessary. In this case, respondent's painter painted the entire living room, in addition to touching up the other rooms in the apartment. Because respondent painted just before petitioners moved into the rental unit, respondent deducted the painting cost from petitioners' deposit. Petitioners testified they did not cause any damage to the walls and did not hang any items on the living room walls which would have left holes in them. The receipt from respondent's painter is not specific about why the living room needed to be painted.

7. Both parties testified with respect to carpet cleaning which appeared as a \$70.00 deduction on the itemized statement. Although the receipt from the carpet cleaners indicated the carpet in the stairs and hall in petitioners' unit was cleaned, it was actually the bedroom carpet which was cleaned. (Michael Johnson acknowledged the error on the receipt.) Mr. Johnson believed the lease provided that the carpets needed to be professionally cleaned at the end of the tenancy. However, the lease provision refers only to cleaning, not carpet cleaning. The carpets were not stained or otherwise damaged; they just needed cleaning.

8. Both parties testified with respect to cleaning which appeared as a \$60.00 deduction on the itemized statement. Petitioners checked with Michael Johnson about cleaning the apartment and they were told that they could do the cleaning themselves, which they did. Mr. Johnson acknowledged petitioners did a good job cleaning the apartment; however, he always has his cleaner go through and clean the stove, refrigerator and bathrooms. The charge is for one hour of time.

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. 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.

12. City ordinance and state law allow for the withholding of all or part of a security deposit for the actual cost to repair damage beyond normal wear and tear that is attributable to the tenant. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(2). Respondent withheld part of the deposit for painting, carpet cleaning and general cleaning. There was no evidence that the work done was beyond normal wear and tear. With respect to the lease provision requiring the apartment to be cleaned professionally at the end of the lease, Michael Johnson told petitioners they could do the cleaning themselves and he acknowledged that they did a good job.

13. Based on the evidence, the Board concludes the deductions for painting and cleaning (including carpet cleaning) were part of normal wear and tear. Therefore, the deductions were not proper.

ORDER

Accordingly, it is hereby ORDERED:

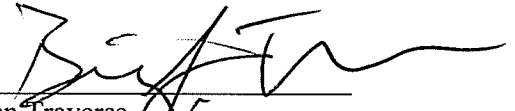
14. Petitioners Josiah Wall and Alden Clements are entitled to recover from respondent Foxden Properties the following amounts:

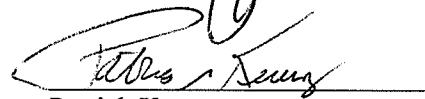
a) \$480.00 of the principal amount of the security deposit improperly withheld after June 10, 2017; and

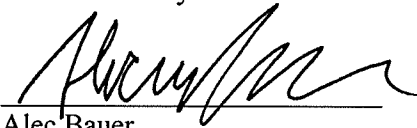
b) Additional interest of \$0.003 per day from June 11, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 19th of September 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Alec Bauer