



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

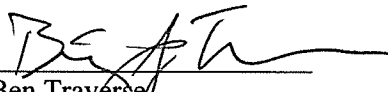
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/27/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Katherine McManus
Keith S. Aaron Hickok Place Trust

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

**In re: Request for Hearing of KATHERINE)
McMANUS Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by KEITH S. AARON) HOUSING BOARD OF REVIEW
HICKOK PLACE TRUST for 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 4, 2018. Board Chair Ben Traverse presided. Board Members Josh O'Hara, Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioner Katherine McManus was present and testified. Respondent Keith S. Aaron Hickok Place Trust was represented at the hearing by Keith Aaron 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 Keith S. Aaron 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. Keith Aaron manages the property.
2. Petitioner Katherine McManus moved into the rental unit with a lease which ran from June 1, 2017 to May 25, 2018. Petitioner occupied the unit with 4 other people.
3. Petitioner paid a security deposit of \$800.00 (her share of the total \$4,000.00 deposit) 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, 2018.
5. On June 13, 2018, respondent sent, by certified mail, a statement to petitioner and her roommates informing them that part of the deposit was being withheld for damages and unpaid rent. Respondent's statement informed petitioner of her right to appeal the withholding of the deposit to this

Board. Respondent returned \$162.42 of the deposit to petitioner with the statement of deductions. On July 17, 2018, respondent sent an additional \$219.11 to petitioner. Interest in the amount of \$80.00 was credited to the entire deposit.

6. Petitioner disputed the timeliness of respondent's notice and the withholding of her deposit; petitioner requested that the Board order respondent to return the balance of her deposit plus interest. Petitioner seeks to recover only her share of the deposit: she does not represent the other tenants in this matter.

7. Keith Aaron acknowledged that the statement of withholding and the first check were sent late. However, he requested leniency because the statement was mailed only a couple of days late. In addition, Mr. Aaron stated the tenants' parents were asking for documents and he was gathering bills which resulted in the statement being sent late.

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. 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).

11. 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, petitioner moved out of the unit on May 25, 2018. Respondent sent a statement to petitioner on June 13, 2018 – 19 days after she vacated the apartment. Thus, respondent failed to comply with the notice requirements by failing to send the statement within 14 days of the date the apartment was vacated. Consequently, respondent forfeited the right to withhold any part of petitioner's deposit.

ORDER

Accordingly, it is hereby ORDERED:

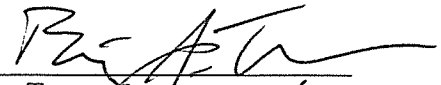
12. Petitioner Katherine McManus is entitled to recover from respondent Keith S. Aaron Hickok Place Trust the following amounts:

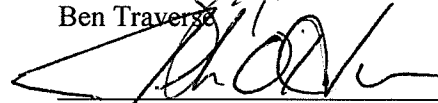
- a) \$434.47 of the principal amount of petitioner's share of the deposit (including her share of the accrued interest); and
- b) Additional interest of \$0.003 per day from June 9, 2018 until such date as the amount improperly withheld is returned to petitioner.

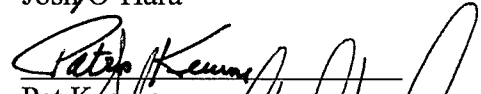
Dated at Burlington, Vermont this 27th of September, 2018.

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

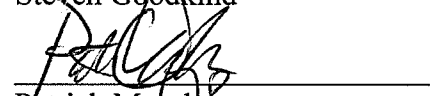
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse

Josh O'Hara

Pat Kearney

Steven Goodkind

Patrick Murphy



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

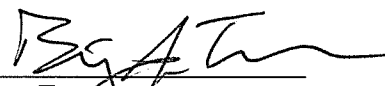
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/27/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Charlotte Slome & Tyra Martinez
Buell St LLC

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

**In re: Request for Hearing of CHARLOTTE)
 SLOME and TYRA MARTINEZ Regarding)
 Withholding of Security Deposit by) CITY OF BURLINGTON
 BUELL STREET LLC for Rental Unit at) HOUSING BOARD OF REVIEW
 113 Buell Street, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 4, 2018. Board Chair Ben Traverse presided. Board Members Josh O'Hara, Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioners Charlotte Slome and Tyra Martinez were present and testified. Respondent Buell Street LLC was represented at the hearing by Kosta Michaelides 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 Buell Street LLC is the owner of a rental unit, 113 Buell Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Kosta Michaelides is a member of the corporation and manages the property.
2. On October 23, 2017, petitioners Charlotte Slome and Tyra Martinez signed a lease with the previous owners of the property to rent the unit from July 1, 2018 to May 25, 2019. Respondent purchased the property on October 31, 2017. At some point prior to the beginning of the lease, petitioners talked with Kosta Michaelides who informed them that he believed the lease began on June 1. Consequently, petitioner Tyra Martinez moved in on June 1, 2018. Petitioner Charlotte Slome never moved into the apartment.
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. Upon moving into the apartment, Tyra Martinez saw several problems in the apartment which she reported to respondent; some of the issues were addressed and resolved, but others were not. In particular, there were some issues with the electricity and the lock on an exterior door. Petitioner Tyra Martinez moved out of the apartment on June 8, 2018 because she felt the unit was unsafe.

5. Respondent sent petitioners an email informing them that their deposit was being withheld because they broke the lease. (Rent was paid for the month of June and Charlotte Slome paid her share of the rent for July 2018; new tenants moved into the apartment on July 1, 2018.) Petitioners did not dispute the timeliness of the notice. Respondent's email did not include notice of petitioners' right to request a hearing before this Board.

CONCLUSIONS OF LAW

6. 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.

7. 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.

8. 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).

9. 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.

10. 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:

11. Petitioners Charlotte Slome and Tyra Martinez are entitled to recover from respondent Buell Street LLC the following amounts:

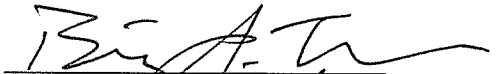
a) \$1500.00 of the principal amount of the security deposit improperly withheld after June 15, 2018; and

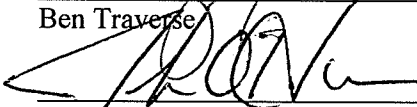
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

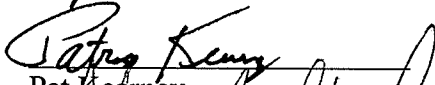
b) Interest of \$0.01 per day from June 1, 2018 until such date as the amount improperly withheld is returned to petitioners.

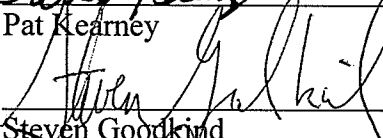
Dated at Burlington, Vermont this 27th of September, 2018.

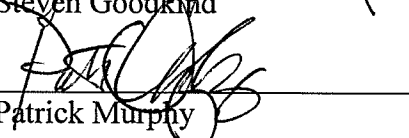
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Pat Kearney


Steven Goodkind


Patrick Murphy



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

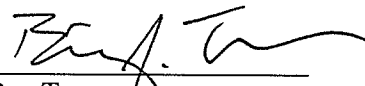
Enclosed is a copy of the "Amended Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/16/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Charlotte Slome & Tyra Martinez
Buell St LLC

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

**In re: Request for Hearing of CHARLOTTE)
 SLOME and TYRA MARTINEZ Regarding)
 Withholding of Security Deposit by) CITY OF BURLINGTON
 BUELL STREET LLC for Rental Unit at) HOUSING BOARD OF REVIEW
 113 Buell Street, Apt. 1)**

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 4, 2018. Board Chair Ben Traverse presided. Board Members Josh O'Hara, Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioners Charlotte Slome and Tyra Martinez were present and testified. Respondent Buell Street LLC was represented at the hearing by Kosta Michaelides who testified.

In its original order dated September 27, 2018, the Board inadvertently made a finding that Respondent failed to provide sufficient notice of his intent to withhold Petitioners' security deposit. The Board is issuing this amended order to clarify that respondent provided timely notice in compliance with the Minimum Housing Code.

This amended order does not impact the outcome of the original order, however. Whereas the petitioners broke their lease agreement and may have been liable to respondent for unpaid rent, respondent acknowledged that he was thankfully able to lease the unit to new tenants without incurring any loss in rental income. Therefore, because respondent was able to fully mitigate his damages, he may not retain any portion of petitioners' security deposit for unpaid rent.

FINDINGS OF FACT

1. Respondent Buell Street LLC is the owner of a rental unit, 113 Buell Street, Apt. 1, in the City of Burlington which is the subject of these proceedings. Kosta Michaelides is a member of the corporation and manages the property.

2. On October 23, 2017, petitioners Charlotte Slome and Tyra Martinez signed a lease with the previous owners of the property to rent the unit from July 1, 2018 to May 25, 2019. Respondent purchased the property on October 31, 2017. At some point prior to the beginning of the lease, petitioners talked with Kosta Michaelides who informed them that he believed the lease began on June 1. Consequently, petitioner Tyra Martinez moved in on June 1, 2018. Petitioner Charlotte Slome never moved into the apartment.

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. Upon moving into the apartment, Tyra Martinez saw several problems in the apartment which she reported to respondent; some of the issues were addressed and resolved, but others were not. In particular, there were some issues with the electricity and the lock on an exterior door. Petitioner Tyra Martinez moved out of the apartment on June 8, 2018 because she felt the unit was unsafe.

5. Respondent sent petitioners an email informing them that their deposit was being withheld because they broke the lease. Petitioners did not dispute the timeliness of the notice. Rent was paid for the month of June and Charlotte Slome paid her share of the rent for July 2018; new tenants moved into the apartment on July 1, 2018. Respondent did not have any loss in rental income.

CONCLUSIONS OF LAW

6. 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.

7. 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.

8. 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). Proper notice was provided.

9. Petitioners vacated the apartment on June 8, 2018 - 7 days after moving into it; they paid rent for the month of June. Respondent was able to re-rent the apartment and new tenants moved in on July 1, 2018. Respondent did not incur any loss in rental income. Consequently, respondent may not retain any portion of the deposit for unpaid rent. Additionally, it is not proper to retain the security deposit as a penalty for breaking the lease.

10. 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:

11. Petitioners Charlotte Slome and Tyra Martinez are entitled to recover from respondent Buell Street LLC the following amounts:

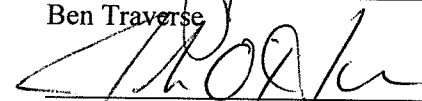
a) \$1500.00 of the principal amount of the security deposit improperly withheld after June 15, 2018; and

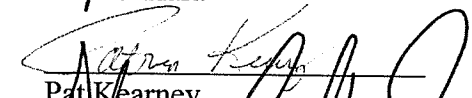
b) Interest of \$0.01 per day from June 1, 2018 until such date as the amount improperly withheld is returned to petitioners.

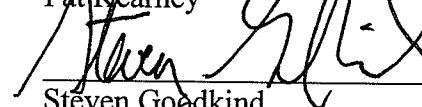
Dated at Burlington, Vermont this 16th of October, 2018.

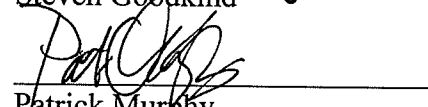
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Pat Kearney


Steven Goodkind


Patrick Murphy