



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

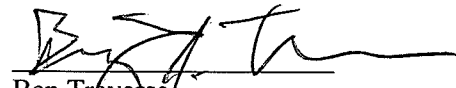
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/12/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Scott Goodwin
Ray Allaire

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

**In re: Request for Hearing of SCOTT)
GOODWIN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by RAY ALLAIRE for) HOUSING BOARD OF REVIEW
Rental Unit at 56 Isham Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 22, 2016. Board Vice Chair Patrick Kearney presided. Board Members Shawn Tao and Steven Goodkind were also present. Petitioner Scott Goodwin was present and testified. Respondent Ray Allaire was also 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 Ray Allaire is the owner of a rental unit, 56 Isham Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Scott Goodwin moved into the rental unit with a lease which ran from October 1, 2014 to May 24, 2015 which was then extended for another year. Monthly rent was \$2,600.00.
3. Petitioner paid a security deposit of \$2,600.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment prior to the end of the lease period, but there were still other tenants and/or sublessees in the unit. There was confusion as to the termination date of the lease: petitioner and the remaining tenants believed they needed to move out by May 31 while respondent maintained the lease expired on May 24, 2016. The remaining tenants moved out on May 27, 2016.
5. There was conflicting testimony about when an itemized statement of deductions was provided to petitioner. Respondent testified that he left the statement in the door at petitioner's new address on June 9, 2016; respondent also testified that he went back to that address the night of June 9 and

the envelope was gone. Petitioner was out of town for a few days and he received the envelope on June 12 when he returned. Petitioner does not know when his roommate picked up the envelope, but disputes respondent delivered it on June 9 based on a June 12 voicemail message he received from respondent stating that the envelope was delivered that day. In addition, the itemized statement is dated June 10, 2016.

6. Respondent returned \$667.41 of the deposit to petitioner. Interest in the amount of \$18.00 was credited to the 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 forwarding 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). The tenants moved out of the rental unit on May 27, 2016. Although respondent maintained that he left an itemized statement in the door of petitioner's house on

June 9, petitioner did not receive the statement until June 12, 2016. In addition, a voice mail message left by respondent on petitioner's phone indicates the statement was delivered on June 12. In the absence of evidence showing the statement was delivered on June 9 (such as the signature of the person who received it), the Board concludes the statement of deductions was received on June 12 – more than 14 days after the unit was vacated. Notice was not timely. Therefore, respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly, it is hereby ORDERED:

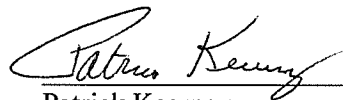
10. Petitioner Scott Goodwin is entitled to recover from Ray Allaire the following amounts:

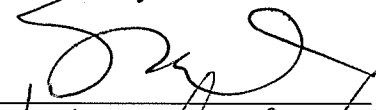
a) \$1950.59 of the principal amount of the security deposit improperly withheld after June 10, 2016; and

b) Additional interest of \$0.01 per day from June 11, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 12th day of September, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Patrick Kearney


Shawn Tao


Steven Goodkind



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

DATED 9/12/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Victoria Guesman
James Brault

**In re: Request for Hearing of VICTORIA)
GUESMAN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by JAMES BRAULT) HOUSING BOARD OF REVIEW
for Rental Unit at 100 Buell Street)**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Respondent James Brault is the owner of a rental unit, 100 Buell Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Victoria Guesman, Nina Jensen, Andrea Dotoio and 4 others moved into the rental unit with a lease which ran from June 1, 2015 to May 31, 2016.
3. Petitioner and her roommates paid a security deposit of \$4,900.00 to respondent. Petitioner and the other tenants were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and her roommates vacated the apartment on May 31, 2016.
5. On June 13, 2016, respondent sent a check and itemized statement to Andrea Dotoio as the tenants' designee. The statement itemized damages totaling \$1,120.72. Interest in the amount of \$2.50 was credited to the deposit. Respondent returned \$3,781.78 of the deposit to Andrea Dotoio.
6. Respondent's itemized statement did not inform the tenants of the opportunity to request a hearing before this Board within 30 days of receipt of the landlord's written statement.

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 certified 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).

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

¹ 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 petitioner's appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

ORDER

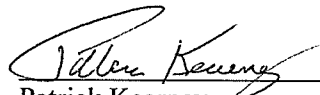
Accordingly, it is hereby ORDERED:

11. Petitioner Victoria Guesman is entitled to recover from respondent James Brault the following amounts:

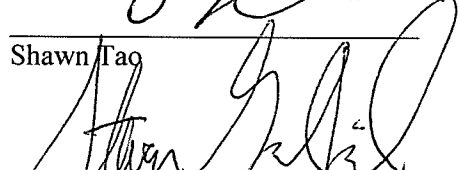
- a) \$1,120.72 of the principal amount of the security deposit improperly withheld after June 14, 2016; and
- b) Additional interest of \$0.007 per day from June 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 12th day of September, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Patrick Kearney


Shawn Tao


Steven Goodkind



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

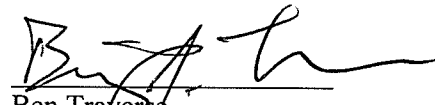
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Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require 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 9/12/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Charlie Defeo (for all tenants)
107-109 Mansfield Ave LLC

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

**In re: Request for Hearing of CHARLIE)
 DEFEO, NILE WALWYN and SKYLER)
 DAVIS Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by 107-109) HOUSING BOARD OF REVIEW
 MANSFIELD AVE LLC for Rental Unit at)
 107 Mansfield Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 22, 2016. Board Vice Chair Patrick Kearney presided. Board Members Shawn Tao and Steven Goodkind were also present. Petitioners Charlie DeFeo, Nile Walwyn and Skyler Davis were present and testified. Respondent 107-109 Mansfield Ave LLC was represented at the hearing by Jim Ross. Also present was Elizabeth Mench.

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 107-109 Mansfield Ave LLC is the owner of a rental unit, 107 Mansfield Avenue, in the City of Burlington which is the subject of these proceedings. Jim Ross manages the property.
2. Petitioners Charlie DeFeo, Nile Walwyn and Skyler Davis moved into the rental unit with a lease which ran from June 1, 2014 to May 25, 2016. Monthly rent was \$3,500.00.
3. Petitioners paid a security deposit of \$3,500.00 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 28, 2016, but did not provide forwarding addresses and did not return the keys to the apartment.
5. On June 11, 2016, respondent sent an itemized statement of deductions from the deposit to petitioners, individually, at the address of the rental unit. All the letters were returned to respondent. On

June 17, 2016, Jim Ross sent an email to Skyler Davis (with a statement of withholding attached) confirming that none of the deposit was being returned due to damages in the unit.

6. Respondent's statement did not inform the tenants of their opportunity to request a hearing before this Board within 30 days of receipt of the statement.

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 certified 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).

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.

ORDER

Accordingly, it is hereby ORDERED:

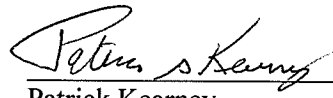
12. Petitioners Skyler Davis, Charlie DeFeo and Nile Walwyn are entitled to recover from respondent 107-109 Mansfield Ave LLC the following amounts:

- a) \$3,500.00 of the principal amount of the security deposit improperly withheld after June 11, 2016;
- b) Interest in the amount of \$8.95 on the entire deposit for the period June 1, 2015 through June 11, 2016; and
- c) Additional interest of \$0.02 per day from June 12, 2016 until such date as the amount improperly withheld is returned to petitioners.

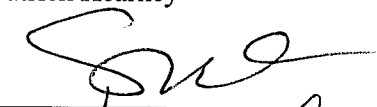
DATED at Burlington, Vermont this 12th day of September, 2016.

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

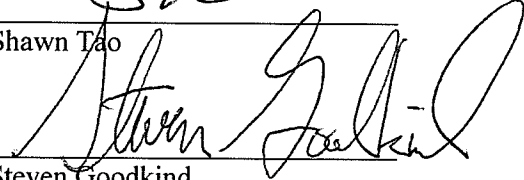
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Patrick Kearney



Shawn Tao



Steven Goodkind

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 886-10-16 Cncv

107-109 MANSFIELD AVE LLC,
Appellant,

v.

CHARLIE DEFEO, NILE WALWYN, AND
SKYLER DAVIS,
Appellees.

VERMONT SUPERIOR COURT
FILED

APR - 6 2017

CHITTENDEN UNIT

RULING ON APPEAL FROM HOUSING BOARD OF REVIEW

This is an appeal from the Findings of Fact, Conclusions of Law, and Order issued by the Burlington Housing Board of Review on September 12, 2016 regarding a dispute between Tenants Charlie DeFeo, Nile Walwyn, and Skyler Davis and Landlord 107-109 Mansfield Ave LLC. Defeo and Walwyn did not appear at the hearing conducted on November 15, 2016. Skyler Davis represented himself. Landlord was represented by its property manager, Jim Ross. Interested party City of Burlington was represented by Richard Haesler, Esq.

Background

The City of Burlington's Housing Board of Review made the following findings: Jim Ross manages a property on Mansfield Avenue in Burlington for Landlord. Tenants rented the unit from June 1, 2014 to May 25, 2016 for \$3,500, and paid a security deposit of \$3,500. Tenants vacated the unit on May 28, 2016 but did not provide forwarding addresses.

On June 11, 2016, Landlord sent itemized statements of deductions to Tenants at the address of the unit. The letters were returned to Landlord by the postal service. On June 17, 2016, Ross sent an email to Davis with the statement of withholding attached. Landlord's statements did not inform Tenants of their opportunity to request a hearing before the Board within 30 days of receiving the statements.

The Board applied the City's security deposit ordinance, Burlington Code of Ordinances § 18-120, and 9 V.S.A. § 4461(c), which require Landlord to return the deposit with 14 days with a statement of deductions. The City ordinance additionally requires notice of Tenants' right to appeal to the Housing Board of Review. The Board concluded that Landlord failed to meet the requirements and therefore forfeit the security deposit. The Board ordered Landlord to return the entire deposit to Tenants with interest. Landlord now appeals.

Discussion

Appeals from decisions of the Housing Board of Review under 24 V.S.A. § 5006 are governed by V.R.C.P. 74. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt. 598. The court reviews the decision of the Board “on the record” rather than by conducting a new hearing. Id. (citing State Dep’t of Taxes v. Tri-State Indus. Laundries, Inc., 138 Vt. 292, 294–95 (1980)). Unless the court determines that it must take evidence or appoint a referee for proper disposition of the matter, the court reviews the record of the hearing and exhibits acted upon by the Board. *See* 24 V.S.A. § 5006(b); V.R.C.P. 74(d).

Landlord argues that it “met all the criteria required.” Landlord contends that the reason the Tenants did not receive the certified mail that included “the Burlington Housing Board of Review[’]s telephone number and instructions” is that Tendants did not provide a forwarding address. Landlord asserts that Ross orally communicated to Davis that Davis could appeal the security deposit withholding, and the Tenants did in fact appeal to the Board.

Vermont law requires that “[a] landlord shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from the date on which the landlord discovers that the tenant vacated or abandoned the dwelling unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date.” 9 V.S.A. § 4461(c). The Burlington ordinance mirrors these requirements, but additionally requires that the “written statement shall also inform the tenant of the opportunity to request a hearing before the Burlington housing board of review within thirty (30) days of receipt of the landlord’s written statement.” Burlington Code of Ordinances § 18-120(c).

The Court has listened to the recording of the Board’s hearing and reviewed the evidence that Landlord submitted. Landlord submitted no evidence to show that the written statements included the statement regarding Tenants’ opportunity to appeal to the Board. The Board found that the written statement did not meet the ordinance’s requirements. Based on this finding, the Board correctly concluded that Landlord forfeit all of its security deposit. *See* Burlington Code of Ordinances § 18-120(c) (“If a landlord fails to return the security deposit *with a statement* within fourteen (14) days, the landlord forfeits the right to withhold any portion of the security deposit.”) (emphasis added). In this case, the statement was not complete because it lacked notice of the opportunity to appeal to the Board.

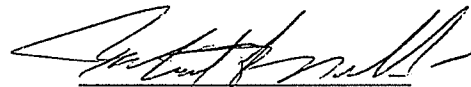
Even if Landlord orally informed Tenant of the opportunity to appeal, and even if Tenants’ filing of an appeal to the Board demonstrates that they received notice, the Board correctly concluded that Landlord may not withhold any of the deposit. The Vermont Supreme Court has ruled that when a landlord does not strictly comply with notice requirements in cases involving security deposits, the landlord forfeits the security deposit. *See In re Soon Kwon*, 2011 VT 26, ¶ 13–19, 189 Vt. 598; *see also* 9 V.S.A. § 4451(1) (defining actual notice, for Vermont’s landlord tenant statutes, as written notice). Because Burlington’s ordinance on security deposits, like Vermont’s statute on security deposits, is a consumer protection law designed to protect tenants, the Board is correct to construe the requirements strictly.

The Court notes that the Board's decision was based on the absence of the statement regarding opportunity to appeal to the Board. The fact that the letters were returned to sender because Tenants did not provide forwarding addresses was not the basis of the Board's decision that Landlord did not meet the notice requirements. *See* Burlington Code of Ordinances, § 18-120(c) ("The landlord shall comply with this section by hand-delivering or mailing the statement and any payment required to the last-known address of the tenant, which may be the rental unit if no forwarding address has been provided.").

Order

The Board's Findings of Fact, Conclusions of Law, and Order of September 12, 2016 are *affirmed*.

Dated this 6th day of April, 2017.



Robert A. Mello
Superior Court Judge