



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

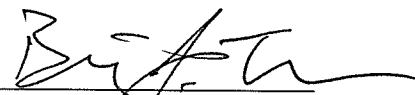
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 9/9/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Nate Senghas
Megalaur Sisters LLC

**In re: Request for Hearing of Robert)
Lawrance, Nathan Senghas, Marcus)
Wadlington and Joseph Taft) CITY OF BURLINGTON
Regarding Withholding of) HOUSING BOARD OF REVIEW
Security Deposit by Megalaur Sisters)
LLC for Rental Unit at 7A Bradley St.)**

The above-named hearing came before the Housing Board of Review on August 21, 2017. Board Members Josh O'Hara and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter pursuant to ordinance provisions. Petitioners Robert Lawrance, Joseph Taft, Marcus Wadlington and Nathan Senghas were present and testified. Respondent Megalaur Sisters LLC was represented at the hearing by Eric Hanley who testified.

6. Respondent deducted \$360.00 from the deposit for carpet cleaning. The lease required the tenants to have the carpets professionally cleaned upon vacating the apartment. Petitioners did not have the carpets cleaned because they were not stained, damaged or otherwise in need of cleaning. Petitioners argued the deduction should not be allowed because having the carpet cleaned between tenants in a unit is part of normal wear and tear for which they were not liable. Eric Hanley pointed to the lease provision stating the cost to clean the carpets would be deducted from the deposit if the tenants did not them cleaned themselves.

7. Respondent deducted \$100.00 for touch-up paint. Petitioners touched up a few spots on the walls in the basement where the paint had chipped off, but otherwise there was no painting that was required.

8. Other deductions taken from the deposit were not disputed.

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 notice was provided.

12. Based on the evidence, the Hearing Officers conclude that the deductions for carpet cleaning and touch-up paint were not proper. There was no evidence that the touch-up painting was anything more than normal wear and tear. Similarly, carpet cleaning (absent stains attributable to a tenant(s)) between tenancies is part of normal wear and tear; consequently, it was not proper to withhold part of the security deposit for carpet cleaning.

ORDER

Accordingly, it is hereby ORDERED:

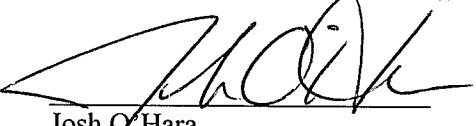
13. Petitioner Nate Senghas (as the representative for all the tenants) is entitled to recover from respondent Megalaur Sisters LLC the following amounts:

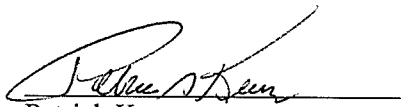
a) \$460.00 of the principal amount of the security deposit improperly withheld after June 8, 2017; and

b) Additional interest of \$0.003 per day from June 9, 2017 until such date as the amount improperly withheld is returned to petitioners.

Dated at Burlington, Vermont this 9th of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara
Hearing Officer


Patrick Kearney
Hearing Officer



HOUSING BOARD OF REVIEW

City of Burlington

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Burlington, Vermont 05401

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

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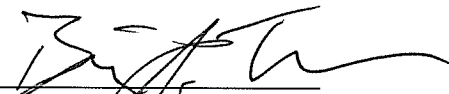
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 9/9/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Jessica Pashko
Nathaniel Hayward

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

**In re: Request for Hearing of Olivia Pena,)
 Jessica Pashko, Paige Phillips and)
 Olivia Oldach Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by Nathaniel Hayward) HOUSING BOARD OF REVIEW
 for Rental Unit at 165 Loomis Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

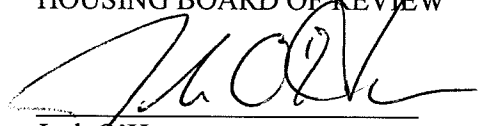
The above-named hearing came before the Housing Board of Review on August 21, 2017. Board Members Josh O'Hara and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter pursuant to city ordinance requirements. Appearing for Nathaniel Hayward were Pam Brady and James Faas. Petitioners were not present.

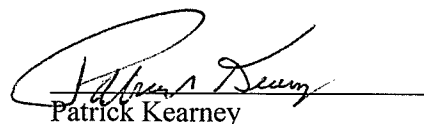
As petitioners filed the request for a hearing, were notified of the hearing, were given notice that their failure to appear would result in dismissal of their case and they did not appear at the hearing, the case will be dismissed. The Hearing Officers note, however, that it appears respondent did not provide proper notice to petitioners (ie, he did not provide notice of the tenants' opportunity to request a hearing before this Board to dispute the withholding of the deposit) and had petitioners appeared at the hearing, a decision would have been rendered against respondent.

Accordingly, the case is dismissed.

Dated at Burlington, Vermont this 9th of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara
Hearing Officer


Patrick Kearney
Hearing Officer



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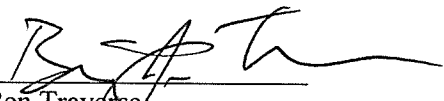
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DATED 9/9/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Jeffrey Diehl
Whiteville Properties

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

**In re: Request for Hearing of JEFFREY DIEHL)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by WHITEYVILLE PROPERTIES) HOUSING BOARD OF REVIEW
LLC for Rental Unit at 26 Summit St,)
Apt. 2)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 21, 2017. For purposes of expedition Board Members Josh O'Hara and Patrick Kearney were appointed Hearing Officers to hear and decide the above-referenced matter. Petitioner Jeffrey Diehl was present and testified. Respondent Whiteyville Properties LLC was represented at the hearing by Eric Hanley who testified. Also appearing and testifying was Tyler Rivard.

Upon consideration of the evidence and the applicable law, the Hearing Officers make the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Respondent Whiteyville Properties LLC is the owner of a rental unit, 26 Summit Street, Apt. 2, in the City of Burlington which is the subject of these proceedings. Eric Hanley manages the property.
2. Petitioner Jeffrey Diehl and his roommates moved into the rental unit with a lease which ran from June 1, 2016 to May 25, 2017. Tyler Rivard was one of petitioner's roommates. Monthly rent was \$3295.00.
3. Petitioner and his roommates paid a security deposit of \$3295.00 to respondent; they were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Petitioner was designated by his roommates as the person to whom the deposit was to be returned.
4. Petitioner and his roommates vacated the apartment on May 25, 2016.
5. On June 10, 2017, petitioner received a written statement from respondent itemizing deductions from the security deposit totaling \$1243.54. Interest in the amount of \$32.95 was credited to

the deposit. Respondent returned \$2084.41 of the deposit to petitioner. Petitioner disputed the deductions.

6. Both parties testified regarding cleaning charges: \$250.00 for general cleaning and \$352.00 for carpet cleaning. Petitioner and his roommates thoroughly cleaned the apartment before moving out. On the move-out inspection sheet, Eric Hanley indicated some cleaning needed to be done, but most of the items listed were marked "okay"; the floors in the bedrooms were marked as "need cleaning". There were no stains on the carpets and they were vacuumed so petitioner disputed the need to have them cleaned. Petitioner argued that any cleaning done by respondent was part of normal wear and tear.

7. Both parties testified regarding the electric bill which appeared as a \$41.54 deduction on the itemized statement. Eric Hanley withdrew the charge after it was pointed out to him that the electric bill was for the reading period 5/26/17 to 6/1/17 when petitioner was no longer living there.

8. Both parties testified with respect to the extra trash removal which appeared as a \$500.00 deduction on the itemized statement. According to the receipts provided by Eric Hanley, the total charges for extra garbage from Gauthier's and for All Cycle Waste were \$462.72. Respondent provided a trailer at the property and directed the tenants to throw their trash in the trailer. Petitioner put some items in the trailer because that's what he was directed to do; he was not told he would be charged for the extra trash removal. Although Mr. Hanley testified that the trailer was filled 3 times, there are only 2 charges from All Cycle on the account statement he provided. In addition, the receipt from Gauthier's indicates the charge for extra trash was \$225.00, not \$321.68 as Mr. Hanley testified; the total of \$321.68 included the charge for weekly service to the property. The cost for the extra trash removal was split between the 3 units in the building with petitioner's share being \$500.00. The lease provides that any tenant whose trash is found outside the container designated for trash removal and identified to an individual tenant will be fined \$500.00.

9. Both parties testified regarding the deduction of \$100.00 for 4 dislodged smoke detectors. Eric Hanley testified that 4 smoke detectors did not have batteries in them and were not connected. There

is no notation on the move-out inspection that there were any dislodged smoke detectors. Petitioner testified that he and his roommates did not disconnect or take apart any detectors.

CONCLUSIONS OF LAW

10. 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.

11. 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.

12. 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.

13. Based on the evidence, the Hearing Officers conclude that none of the deductions taken from the deposit were proper. The cleaning done in the apartment was part of normal wear and tear and any damage to the smoke detectors was not attributable to petitioner or his roommates. As for the charge for extra trash removal, petitioners did not leave any trash outside the containers provided by respondent. In addition, there was no trash identified to petitioner or any of his roommates.

ORDER

Accordingly, it is hereby ORDERED:

14. Petitioner Jeffrey Diehl is entitled to recover from respondent Whiteyville Properties LLC the following amounts:

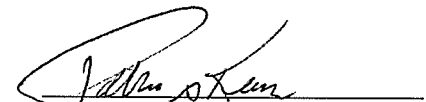
- a) \$1243.54 of the principal amount of the security deposit improperly withheld after June 8, 2017; and
- b) Additional interest of \$0.01 per day from June 9, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 9th of September, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara
Hearing Officer



Patrick Kearney
Hearing Officer

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 937-10-17 Cncv

WHITEYVILLE PROPERTIES, LLC,
Appellant,

v.

JEFFERY DIEHL,
Appellee.

VERMONT SUPERIOR COURT

DEC 19 2017

CHITTENDEN UNIT

RULING ON APPEAL

This is an appeal from a decision issued by the City of Burlington's Housing Board of Review ("Board") on September 9, 2017. Appellant Whiteville Properties, LLC appeals the Board's decision on procedural and substantive grounds. Michael D. Johnson, Esq. represents Whiteyville and Appellee represents himself. The City of Burlington appears as an interested party represented by Richard W. Haesler, Jr., Esq.

Background

The following background is recounted for purposes of deciding the pending appeal. Jeffrey Diehl and Tyler Rivard petitioned the Board for return of a portion of their security deposit, which Appellant retained after Appellee and his roommates vacated their apartment at the end of their lease term. Board members Josh O'Hara and Patrick Kearney were appointed to serve as Hearing Officers and conducted a hearing on August 21, 2017. Appellee attended the hearing, and property manager Eric Hanley represented Appellant.

The Board made the following findings of fact. Appellant owns 26 Summer Street, Apartment 2. Appellee and four roommates rented the unit under a written lease, and Eric Hanley manages the property. The written lease ran from June 1, 2015 to May 25, 2017.

Appellee and his roommates paid a security deposit of \$3,295.00, and rent was \$3,295.00 per month. Under the terms of the lease, Appellant was to return the security deposit at the end of the lease minus any amounts withheld for damage to the premises. When Appellee and his roommates moved out of the premises, Appellant withheld \$1,243.54 of the security deposit and reimbursed Appellees for \$2,084.41 of the deposit, plus accrued interest. Appellant also provided Appellee and his roommates with an itemized list of deductions from the security deposit, as follows:

1. Cleaning Charges: \$250;
2. Burlington Electric Bill: \$41.54;

3. Extra Trash Removal: \$500;
4. Carpets Professionally Cleaned: \$352;
5. Dislodged Smoke Detectors (4 x 25): \$100.

Appellee testified that he and his roommates thoroughly cleaned the apartment before moving out. Hanley indicated on the move-out inspection sheet that some cleaning needed to be done, but most of the items listed were marked “okay.” He marked the bedroom floors as “need cleaning.” Appellee claimed that there were no stains on the carpets and they were vacuumed. He argued that any cleaning needed was part of normal wear and tear.

Both parties testified regarding the electric bill. Appellant conceded that the balance was for the reading period from May 26 through June 1, 2017, after Appellee and his roommates vacated the premises.

Both parties testified regarding the trash removal. Appellant provided a trailer at the property and directed tenants to throw their trash into the trailer. Appellant put some items into the trailer because that is what Hanley told him to do; he was not told that he would be charged for the use of the trailer. Hanley provided receipts from Gauthier’s and All Cycle as evidence of the cost of trash removal. The receipt from Gauthier’s indicated \$225 for extra trash, not \$321.68 as Hanley indicated. The \$321.68 total included the charge for weekly service at the property. Hanley claimed that the extra trash removal cost was split between three units in the building, and the share for Appellee’s unit was \$500. The lease provides that any tenant whose trash is found outside the designated container will be fined \$500 if the trash is identified to an individual tenant.

Both parties testified regard the four allegedly dislodged smoke detectors. Hanley testified that four smoke detectors did not have batteries in them and were not connected. The move-out inspection sheet did not indicate that there were any dislodged smoke detectors. Appellee testified that neither he nor his roommates disconnected the smoke detectors.

The Board concluded that none of the deductions from the security deposit were proper. The cleaning done in the apartment was part of normal wear and tear and any damage to the smoke detectors was not attributable to Appellee or his roommates. Appellee did not leave any trash outside of the containers provided by Appellant, and none of the alleged extra trash could be identified as that of Appellee. The Board ordered Appellant to return \$1,243.54 of the principal amount of the security deposit, plus interest.

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).

Appellant challenges two aspects of the Board's decision. First, Appellant argues that the Board did not have a quorum as required by BCO § 18-54. Second, Appellant claims that the Board's findings "are wholly unsupported by the facts and are in complete disagreement and without regard to the contract between the parties."

Burlington's ordinances provide that "[i]n order to conduct a hearing pursuant to a request, a majority of the board must be present, provided that the board may, for purposes of expedition or in cases of emergency, designate one (1) or more of its members to sit as hearing officer(s) to hear and decide matters brought before the board." BCO § 18-54. In first-instance security deposit hearings, a majority of the Board need not be present because the matter is not an appeal as provided by 24 V.S.A. § 5005(c)(4). In re Soon Kwon, 2011 VT 26, ¶ 21, 189 Vt. 598 (mem.). The Board was therefore within its authority to designate two members to conduct the hearing. Therefore, the Court will not reverse the Board's decision for lack of a quorum.

Appellant argues that the facts do not support the Board's findings and "are in complete disagreement and without regard to the contract between the parties." The Court has reviewed the audio recording of the hearing, the exhibits that the Board considered, and the Board's decision, and concludes that the evidence supports the Board's findings of fact.

Vermont's landlord-tenant statutes and Burlington's ordinances enumerate the limited, allowable deductions from a security deposit. A landlord may withhold a security deposit for "(1) nonpayment of rent; (2) damage to property of the landlord, unless the damage is the result of normal wear and tear or the result of actions or events beyond the control of the tenant; (3) nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility; and (4) expenses required to remove from the rental unit articles abandoned by the tenant." 9 V.S.A. § 4461(b)(1)–(4); see also BCO § 18-120(a)(1) (permitting landlords to require a deposit as security "against damage beyond normal wear and tear to the premises which is attributable to the tenant, against nonpayment of rent, against nonpayment of utility or other charges which the tenant was required to pay directly to the landlord or to a utility, and against expenses required to remove from the rental unit articles abandoned by the tenant.").

It was within the Board's authority to determine whether the deductions for cleaning resulted from damage beyond normal wear and tear. The Board concluded, based on the evidence before it, that there was no damage beyond wear and tear. The Board also found, based on the evidence, that none of the excess trash was attributable to the Appellee or his roommates, that they had not left trash outside of the designated receptacles, and that they were not responsible for the allegedly dislodged smoke detectors. Therefore, the Board properly determined that Appellant could not properly deduct any of the claimed amounts from the security deposit..

Appellant argues that it is entitled to some or all of these claimed deductions under the parties' lease. However, the Board's decision is limited to what a landlord may or may not deduct from the tenants' security deposit. Whether Appellant is entitled to recover the claimed

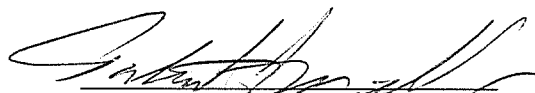
amounts under the parties' lease is a separate legal matter that is beyond the Board's jurisdiction to determine in the context of a security deposit hearing.

For the reasons stated above, the Court will not disturb the Board's decision.

ORDER

The Housing Board of Review's September 9, 2017 Findings of Fact, Conclusions of Law, and Order is *affirmed*.

Dated this 18th day of December, 2017


Robert A. Mello, Superior Judge