

BURLINGTON HOUSING BOARD OF REVIEW

Tuesday, August 18, 2020

7:00 p.m.

The meeting will be entirely remote and virtual. You can join the meeting via Zoom:

<https://us02web.zoom.us/j/81925787360?pwd=QVFLdXNpc1FMeUpoaTJiR0hKMfZuZz09>

Passcode: 610158

Or iPhone one-tap:

US: +13126266799,,81925787360#,,,,,0#,,610158# or +19292056099,,81925787360#,,,,,0#,,610158#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 (312) 626 6799 or +1 (929) 205-6099 or +1 (301) 715-8592 or +1 (346) 248-7799 or +1 (669) 900-6833

Webinar ID: 819 2578 7360

Passcode: 610158

International numbers available: <https://us02web.zoom.us/j/kdPeBU8T1i>

AGENDA

1. Raphael Rosenthal, Bryce Gross, Tye Martin, Scott Barnes, Mason Strunk (tenants); Bing Enterprises (landlord) (security deposit case) re: 15 Weston St
2. Margaret Simpson, Anna Norcross, Eisha Lichtenstein (tenants); LNP, Inc. (landlord) (security deposit case) re: 50 Barrett St, #3
3. Benjamin Martin (tenant); Meghan Gibbo (landlord) (security deposit case) re: 244 Marple St, Apt. 4
4. Courtney Gilbert, Emily Stover, Sophia Merritt (tenants) (security deposit case) re: 230 Pine St, Apt. 2

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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 9/4/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Ben Martin
Tim Gibbo

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of BEN MARTIN)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by TIM and TINA GIBBO for)
 Rental Unit at 244 Maple St, Apt. 4)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 18, 2020; the meeting was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Ben Martin was present and testified. Respondent Tim Gibbo 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. Respondents Tim and Tina Gibbo are the owners of a rental unit, 244 Maple Street, Apt. 4, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Ben Martin moved into the rental unit with a written lease which ran from June 1, 2019 to May 25, 2020. Petitioner had roommates who are not a party to this hearing. Monthly rent was \$2100 with petitioner's share being \$700.00.
3. Petitioner paid a security deposit of \$700.00 to respondents. 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 on May 24, 2020.
5. On June 3, 2020, respondents sent a letter to petitioner indicating the return of his security deposit was under review and they would be in contact once they received guidance

from their legal team. The letter did not inform petitioner of his right to request a hearing before this Board. The letter was returned to respondents by the post office stating the address was insufficient. (There was no apartment number noted on the envelope.) Respondents resent the letter with the full address, but it was also returned to them by the post office.

6. On June 9, 2020, respondents sent a written statement to petitioner indicating that the deposit was being withheld for unpaid rent; petitioner did not pay rent for the months of February, March, April and May 2020. The statement did not inform petitioner of the right to dispute the withholding of his deposit. That letter was also returned by the post office. However, respondents communicated with petitioner via text so that he was aware that his deposit was being withheld for unpaid rent.

7. Interest was not credited to the deposit.

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, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statements to him. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. 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

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

most bank passbook savings accounts – 0.25% simple annual interest.

Order

Accordingly, it is hereby ORDERED:

13. Petitioner Ben Martin is entitled to recover from respondents Tim and Tina Gibbo the following amounts:

a) \$700.00 of the principal amount of the security deposit improperly withheld after June 7, 2020;

b) Interest in the amount of \$1.78 on the entire amount of the deposit from June 1, 2019 through June 7, 2020; and

c) Additional interest of \$0.005 per day from June 8, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 4th of September, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman

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Minutes

Members present: Josh O'Hara, Betsy McGavisk, Patrick Murphy, Charlie Gliserman, Olivia Pena

Staff present: Lisa Jones

1. Raphael Rosenthal, Bryce Gross, Tye Martin, Scott Barnes, Mason Strunk (tenants); Bing Enterprises (landlord) (security deposit case) re: 15 Weston St
Case postponed at landlord's request
2. Margaret Simpson, Anna Norcross, Eisha Lichtenstein (tenants); LNP, Inc. (landlord) (security deposit case) re: 50 Barrett St, #3
Case postponed at landlord's request
3. Benjamin Martin (tenant); Meghan Gibbo (landlord) (security deposit case) re: 244 Marple St, Apt. 4
Present were: Ben Martin, Tim Gibbo; parties were sworn in.
The Board took evidence and testimony from both parties; hearing concluded.
4. Courtney Gilbert, Emily Stover, Sophia Merritt (tenants) (security deposit case) re: 230 Pine St, Apt. 2
Present were: Courtney Gilbert, Emily Stover, Sophia Merritt, Chris Khamnei; parties were sworn in.
Case settled after hearing. Case closed and no decision issued.