



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

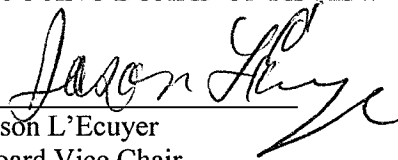
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/6/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuyer
Board Vice Chair

cc: Georgie Dennis-DeVries & Stephanie Hackett
Emily Ferro
Josh Talbot

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

**In re: Request for Hearing of EMILY FERRO,)
STEPHANIE HACKETT, and GEORGIA)
DENNIS-DeVRIES Regarding) CITY OF BURLINGTON
Withholding of Security Deposit by) HOUSING BOARD OF REVIEW
JOSH TALBOT for Rental Unit at 99)
Saratoga Avenue)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 18, 2015. Jason L'Ecuyer presided. Board Members Loyal Ploof, Patrick Kearney and Ben Traverse were also present. Petitioners Emily Ferro, Stephanie Hackett, and Georgia Dennis-DeVries were present and testified. Respondent Josh Talbot was present and testified. Mr. Talbot was represented by attorney Shawn Tao, Esq.

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 Josh Talbot is the owner of a rental unit, 9 Saratoga Avenue, in the City of Burlington which is the subject of these proceedings.
2. On July 1, 2014, all three (3) petitioners signed a written one year lease to rent the unit.
3. Petitioners paid a combined security deposit of \$1800.00 to respondent – each paying \$600. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. In February 2015, prior to the termination of the lease period, petitioner Ferro moved out of the unit, citing differences with petitioners Dennis-DeVries and Hackett. This move out occurred with the agreement of respondent. Indeed, respondent told Ferro in an email that she would get back her \$600 security at the end of the original lease term. Initially, Ferro paid some additional months' rent and was

tasked with finding a new tenant to assume the remainder of her lease obligation. A new tenant was otherwise found, though, and respondent waived her security deposit requirement.

5. The new tenant, who is not a party to this matter, did not stay for the duration of the lease term either, though. Moreover, Dennis-DeVries and Hackett also moved out at the end of May 2015, approximately one month prior to the termination of the original lease.

6. Shortly after all tenants moved out of the unit, Dennis-DeVries and Hackett received an email from respondent indicating that a portion of their security deposit was being withheld. However, no reason for the deduction was provided. Instead, on July 17, 2015 they both simply received a check for \$215, for a total of \$430 out of the original \$1800 deposit. Both checks for \$215 were subsequently stopped for payment by respondent.

7. Ferro received no notice whatsoever regarding her portion of the security deposit, which was retained in its entirety. At hearing, respondent argued that Ferro offered her portion of the deposit as consideration for his entirely assuming the responsibility of finding a new tenant to replace her. To the extent this offer was ever made, though, the record clearly demonstrates it was never accepted by respondent—as noted above, the Board finds that respondent promised to return Ferro's deposit at the conclusion of the original lease term.

8. Dennis-DeVries and Hackett, along with Ferro, subsequently claimed respondent failed to meet his obligations with respect to proper notice regarding the return of their security deposit.

9. At the hearing, respondent presented a list of alleged damages that justified his withholding of a portion of Dennis-DeVries' and Hackett's and all of Ferro's security deposit, but prior to that day, petitioners had never been provided with a list or itemization of any kind. Moreover, after reviewing the list at the hearing, all the petitioners disputed the list of damages stating they left the unit clean and in good shape.

10. Petitioner Ferro had initially sought double damages from respondent under the code, but waived the claim prior to the conclusion of the hearing.

CONCLUSIONS OF LAW

11. 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.

12. 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.

13. 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).

14. Furthermore, 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); see also In re Soon Kwon, 189 Vt. 598 (2011) (requiring strict adherence to state and city notice requirements).

15. In the present case, regardless of whether any of the petitioners actually owe damages to respondent, the Board's purview is limited to considering whether it was reasonable for respondent to use petitioners' security deposit to satisfy the alleged damages. Here, timely notice was not provided as a matter of law. Petitioner Ferro moved out in February and the remaining petitioners moved out on May 31, 2015. Respondent had until June 14, 2014 to provide proper notice of any deductions. His initial email stating he would be withholding something but not providing any details was insufficient.

16. Respondent argued at hearing that the Board was not bound to follow the code's requirements in this case pursuant to Minimum Housing Code Sec. 18-42(c) which provides that the Board may "vary from the strict application of the requirements of this chapter where, by reason of an extraordinary and exceptional situation unique to the property or circumstance involved, the requirements of this chapter would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued . . .". Historically, this language has been solely applied to appeals from orders of the code enforcement office. Additionally, if the provision was applied to this proceeding, the Board would conclude that no extraordinary or exceptional situation unique to the property or circumstance involved in this case justifies a variance from the notice rules.

17. The law requires that respondent pay Ferro her full deposit of \$600, and that he pay the remaining petitioners \$600 each as well due to the fact the partial payments to Dennis DeVries and Hackett was stopped, plus accrued interest.

18. 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:

19. Petitioners Emily Ferro, Georgia Dennis-DeVries, and Stephanie Hackett are entitled to recover from respondent Josh Talbot the following amounts:

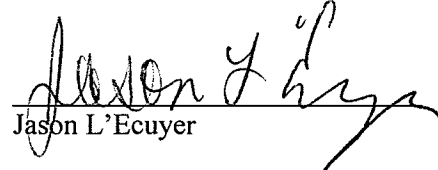
a) Ferro - \$600 (principal amount of the deposit) plus interest in the amount of \$1.44 for the period July 1, 2014 to June 14, 2015 plus additional interest of \$0.004 per day from June 15, 2015 until such date as the amount improperly withheld is returned to her;

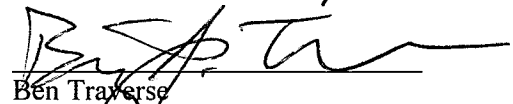
b) Dennis-DeVries - \$600 (principal amount of the deposit) plus interest in the amount of \$1.44 for the period July 1, 2014 to June 14, 2015 plus additional interest of \$0.004 per day from June 15, 2015 until such date as the amount improperly withheld is returned to her;

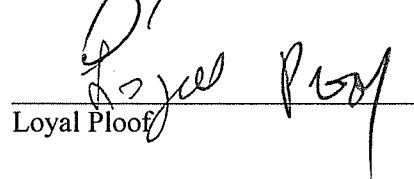
c) Hackett - \$600 (principal amount of the deposit) plus interest in the amount of \$1.44 for the period July 1, 2014 to June 14, 2015 plus additional interest of \$0.004 per day until such date as the amount improperly withheld is returned to her.

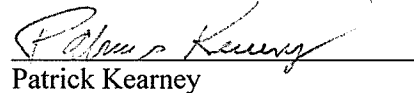
DATED at Burlington, Vermont this 6th day of October, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuyer


Ben Traverse


Loyal Ploof


Patrick Kearney



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

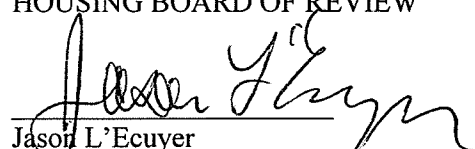
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/6/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuyer
Board Vice Chair

cc: Brock Bell
BPJS Management LLC

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

**In re: Request for Hearing of BROCK BELL)
 Regarding Withholding of Security) CITY OF BURLINGTON
 Deposit by BPJS MANAGEMENT LLC) HOUSING BOARD OF REVIEW
 for Rental Unit at 50 LAFOUNTAIN ST)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 18, 2015. Jason L'Ecuyer presided. Board Members Loyal Ploof, Patrick Kearney and Ben Traverse were also present. Petitioner Brock Bell was present via telephone and testified. Respondent BPJS Management, LLC was represented by Christine Bissonette, who testified on behalf of respondent and presented two additional witnesses in further support of respondent's defense.

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 BPJS Management LLC is the owner of a rental unit, 50 Lafountain Street, in the City of Burlington, which is the subject of these proceedings.
2. On July 24, 2013, petitioner and other roommates moved into the unit, with all eventually moving out between May 24, 2015 and May 27, 2015.
3. Petitioner and three (3) other roommates signed the lease with respondent and paid a combined security deposit of \$2600.00. Petitioner and roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Following the move out, petitioner received an itemized list of damages and deductions from respondent on June 11, 2015, which was mailed on June 8, 2015.
5. Petitioner claims the mailing did not meet the "14 day rule" because it was not received until June 11, 2015. The Board considers the notice requirement to have been met on the day of mailing,

however. Because petitioner's roommates did not completely vacate the rental unit until May 27, 2015, the "14 day rule" period did not commence until that point.

6. Petitioner also claims the itemized list of damages and deductions to the security deposit, including cleaning expenses, were not reasonable or accurate, and nor was a final inspection completed by respondent. However, petitioner was not in Burlington at the time of the move out inspection and as such, could not say who was at the move out inspection. Moreover, respondent's testimony that one or more of its employees was in fact present for the move out inspection which was the basis for the itemized list of damages and deductions, was credible and the Board so finds.

7. Respondents returned to petitioner \$1442.04, including accrued interest, along with the itemized list of deductions. The total amount of deductions from the security deposit was \$1205.66.

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).

11. 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). In the present case, timely notice was provided and the itemized damages and list of corresponding deductions to the security deposit were reasonable.

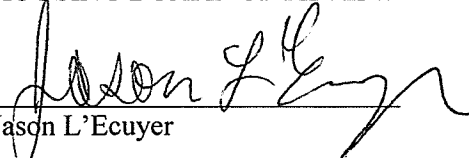
ORDER

Accordingly, it is hereby ORDERED:

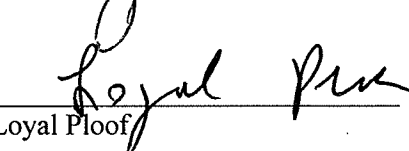
12. Petitioner's claim for a return of all or a portion of the security deposit withheld by respondent is hereby DENIED.

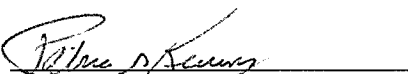
DATED at Burlington, Vermont this 6th day of October, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Jason L'Ecuier


Ben Traverse


Loyal Plouf


Patrick Kearney