

BURLINGTON HOUSING BOARD OF REVIEW

Monday, August 8, 2022

7:00 p.m.

The meeting will be REMOTE ONLY. You can join the meeting via Zoom:

<https://zoom.us/j/93997291243>

Or One tap mobile :

US: +13126266799,,93997291243# or +16469313860,,93997291243#

Or Telephone:

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

US: +1 312 626 6799 or +1 646 931 3860 or +1 929 205 6099 or +1 301 715 8592 or +1 669 900 6833 or
+1 253 215 8782 or +1 346 248 7799 or +1 386 347 5053 or +1 564 217 2000 or +1 669 444 9171

Webinar ID: 939 9729 1243

International numbers available: <https://zoom.us/u/aBFAsbhzE>

AGENDA

1. Ariel Berger (tenant); Burlington Housing Authority (landlord) (security deposit case) re: 49 Franklin Square, Apt. 105 (continuation of hearing from 7/25/22 to take additional testimony strictly limited to tenant's claim of willful withholding of deposit)
2. Madison Panyard, Martina Kroupa (tenants); Sarah & Matthew Mayer (landlords) (security deposit case) re: 28 Brookes Ave., Unit 2 (postponed from meeting of 7/25/22)
3. Alexandra Wedge (tenant); Micah Trexler (landlord) (security deposit case) re: 337 College St, Unit 9
4. Olivia Do & Warren Nielsen (tenants); Arlette & Rene Ball (landlord) (security deposit case) re: 80 Cedar St.
5. Patrick O'Connor, Dylan Gallagher, Lars Enstrom (tenants); Ben Heath (landlord) (security deposit case) re: 307 Colchester Ave, downstairs

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505.

BURLINGTON HOUSING BOARD OF REVIEW

Monday, August 8, 2022

7:00 p.m.

The meeting will be REMOTE ONLY. You can join the meeting via Zoom:

<https://zoom.us/j/93997291243>

Minutes

Board Members present: Betsy McGavisk, Evan Litwin, Olivia Taylor, Josh Wronski

Staff present: Lisa Jones

1. Madison Panyard, Martina Kroupa (tenants); Sarah & Matthew Mayer (landlords) (security deposit case) re: 28 Brookes Ave., Unit 2 (postponed from meeting of 7/25/22)
Present were Madison Panyard, Martina Kroupa, Sarah Mayer, Matthew Mayer and Bryce Turner. All parties and witnesses were sworn in. Both parties presented evidence and testimony. The hearing was closed.
2. Alexandra Wedge (tenant); Micah Trexler (landlord) (security deposit case) re: 337 College St, Unit 9
Present were: Alexandra Wedge, Micah Trexler, Jennifer Wedge and Rachel Smith. All parties and witnesses were sworn in. Both parties presented evidence and testimony. The hearing was closed.
3. Olivia Do & Warren Nielsen (tenants); Arlette & Rene Ball (landlord) (security deposit case) re: 80 Cedar St.
Present were Oliva Do, Warren Nielson, Arlette Ball and Meghan Gibbo. All parties and witnesses were sworn in. Both parties presented evidence and testimony. The hearing was closed.
4. Patrick O'Connor, Dylan Gallagher, Lars Enstrom (tenants); Ben Heath (landlord) (security deposit case) re: 307 Colchester Ave, downstairs
Present were Patrick O'Connor, Dylan Gallagher, Lars Enstrom and Ben Heath. All parties were sworn in. Both parties presented evidence and testimony. The hearing was closed.

The meeting was adjourned.

The Board deliberated in private.



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 9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Madison Panyard & Martina Kroupa
Sarah & Matthew Mayer

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

In re: Request for Hearing of MADISON)
 PANYARD and MARTINA KROUPA)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by SARA and MATTHEW)
 MAYER for Rental Unit at 28 Brookes)
 Avenue, Unit 2)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the meeting was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Madison Panyard and Martina Kroupa were present and testified. Respondents Sarah and Matthew Mayer was also present and testified. Also appearing as a witness was Bryce Turner.

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 Sarah and Matthew Mayer are the owners of a rental unit, 28 Brookes Avenue, Unit 2, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Madison Panyard and Martina Kroupa¹ moved into the rental unit with a written lease which ran from June 1, 2021 to May 29, 2022. Monthly rent was \$2300.00.
3. The parties disputed the amount of the security deposit. Respondents maintained that petitioners did not pay a security deposit; however, they then acknowledged that Martina Kroupa's deposit under the previous lease rolled over to the current lease. In the end,

¹ Martina Kroupa was an existing tenant in the apartment; she renewed her lease with 2 new tenants.

respondents testified they had a deposit of \$767.00 from Martina Kroupa, but no deposit money from either of the new tenants (Madison Panyard and Maeve Tomas).

4. Petitioners testified the amount of the deposit was \$1534.00. Prior to moving into the apartment, Madison Panyard and Maeve Tomas (who is not a party in this proceeding) paid their share of the security deposit to Martina Kroupa so that she, in turn, could Venmo each of the departing tenants their share of the deposit. As exhibited in text messages between Martina Kroupa and Sarah Mayer, this arrangement was brokered by Sarah Mayer. Sarah Mayer confirmed with the departing tenants that they received their share of the deposit from Martina Kroupa. Respondents never returned any deposit money to the departing tenants so that they retained a total deposit of \$2300.00 for the apartment. The Board finds that petitioners' security deposit was \$1534.00. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

5. Petitioners vacated the apartment on May 29, 2022 and notified respondents that they were out of the apartment. Respondents did not return the deposit or send petitioners an itemized list of deductions from the deposit. On the one hand, respondents testified there was no deposit to return; on the other hand, respondents acknowledged they had a deposit from Martina Kroupa. Respondents also testified there was unpaid rent and damage to the apartment.

6. Petitioners argued that respondents willfully withheld the deposit and requested that the Board order respondents to award double damages. When petitioners did a walk-through of the apartment with Matt Mayer just prior to leaving Mr. Mayer acknowledged that he knew he had to return the deposit or provide a statement within 14 days.

7. On June 13, 2022, Maddie Panyard texted respondents and asked about the return of their deposit. Ms. Panyard did not receive a response so she sent another text on June 14, 2022

requesting the return of their deposit by June 22 or they would file a Small Claims Court complaint. Matt Mayer responded, “We will see you in court!”

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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). Respondents did not return the deposit and did not provide an itemized list of deductions from the deposit. Therefore, respondents forfeited the deposit.

11. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondents' failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). When petitioners and respondent Matt Mayer walked through the apartment on May 29, 2022, respondent acknowledged knowing that he was required to return the deposit or provide a statement of withholding within 14 days, yet he failed to do so. When petitioners reminded them of that obligation and gave them an opportunity to return the deposit respondents stated they would see them in court. While respondents argued petitioners did not pay a deposit so there was no money to return, they then acknowledged that there was a deposit from Martina Kroupa. However, respondents continued to argue that there was no deposit money from Maddie Panyard or the third tenant even though Sarah Mayer requested that the deposit money be paid to the departing tenants, rather than respondents returning deposit money to them and then collecting money from Madison Panyard and Maeve Tomas directly. Respondent Sarah Mayer required confirmation from the departing tenants that their deposits were returned by the incoming tenants before she allowed them to move into the apartment so she knew she had a full deposit of \$2300 for the apartment. The Board concludes that the deposit was willfully withheld: respondents knew they had 14 days to either to return the deposit or provide a written statement of deductions, but they failed to do so. In addition, respondent gave conflicting testimony about the deposit even though they knew, or should have known, that they held a total deposit of \$2300.00 for the unit.

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

Order

Accordingly, it is hereby ORDERED:

13. Petitioners Madison Panyard and Martina Kroupa are entitled to recover from respondents Sarah and Matt Mayer the following amounts:

- a) \$1534.00 of the principal amount of the security deposit improperly withheld after June 12, 2022;
- b) \$1534.00, double the amount of the deposit willfully withheld after June 12, 2022;
- c) Interest in the amount of \$3.95 on the entire deposit for the period June 1, 2021 to June 12, 2022; and
- d) Additional interest of \$0.01 per day from June 13, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor



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

9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk

Betsy McGavisk

Board Vice Chair

cc: Alex Wedge (via email)
Micah Trexler

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

**In re: Request for Hearing of ALEXANDRA)
 WEDGE Regarding Withholding of) Security Deposit Appeal
 Security Deposit by MICAH TREXLER)
 For Rental Unit at 337 College St, Unit 9)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the hearing was held remotely via Zoom . Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioner Alexandra Wedge was present and testified. Respondent Micah Trexler was also present and testified. Also appearing and testifying as witnesses were Jennifer Wedge and Rachel Smith.

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 Micah Trexler is the owner of a rental unit, 337 College Street, Unit 9, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Alexandra Wedge moved into the rental unit with a written lease which ran from June 6, 2021 to May 31, 2022. Monthly rent was \$2,750.00.
3. Petitioner paid a security deposit of \$2,750.00 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 31, 2022.
5. On June 6, 2022, respondent sent a statement, by certified mail, to petitioner informing her that \$1,173.89 of the deposit was being withheld for cleaning, flea treatment, lost rent, final water bill and personal time. Respondent returned \$1,582.39 of the deposit to

petitioner. Respondent's written statement included the following notice: "You have the right to appeal to the Housing Board of Review."

6. Interest in the amount of \$6.28 was credited to the deposit.

7. Petitioner disputed the withholding of part of the deposit on the basis that there was no damage to the unit. Petitioner acknowledged, however, that the deduction for the final water bill was appropriate.

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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). Respondent returned part of the security deposit with an itemized statement which included notice of petitioner's opportunity to appeal "to the Housing Board of Review"; however, that statement failed to include the 30-day deadline to appeal to this Board.

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 within 30 days; 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. The Board concludes respondent's notice of withholding to petitioner was not proper as it did not contain the 30-day deadline for appealing. Therefore, the Board concludes respondent forfeited the deposit.

12. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERD:

13. Petitioner Alexandra Wedge is entitled to recover from respondent Micah Trexler the following amounts:

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

a) \$1,173.89 of the principal amount of the security deposit improperly withheld after June 14, 2022; and

b) Additional interest of \$0.01 per day from June 15, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor



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 9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Olivia Do
Arlette & Rene Ball

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

**In re: Request for Hearing of OLIVIA DO and)
WARREN NIELSEN Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
ARLETTE and RENE BALL for Rental)
Unit at 80 Cedar Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the hearing was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Olivia Do and Warren Nielsen were present and testified. Respondent Arlette Ball was also present and testified. Appearing and testifying as a witness was Meghan Gibbo.

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 Arlette and Rene Ball are the owners of a rental unit, 80 Cedar Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Olivia Do and Warren Nielsen moved into the rental unit with a written lease which ran from June 1, 2021 to May 31, 2022. Monthly rent was \$1375.00.
3. Petitioners paid a security deposit of \$1375.00 to respondents. 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 31, 2022. At the move-out inspection on May 31, respondent Rene Ball indicated to petitioners that everything looked okay. On June 1,

2022 via text message, petitioners provided respondents with their forwarding address for the return of their deposit.

5. On June 4, 2022, respondents texted petitioners indicating that they would be withholding some of the deposit for cleaning and repairs. In response, petitioners sent respondents an email disputing any damage in the apartment; in addition, petitioners indicated they cleaned the apartment well before leaving and Rene Ball indicated the cleaning was adequate. In their email, petitioners provided respondents with a link to state law regarding the return of security deposits.

6. On June 7, 2022, respondents sent petitioners an email with an itemized list of deductions from the deposit; respondents itemized deductions of \$360.00 from the deposit for cleaning, garbage removal, repairs and painting. Respondents indicated they were putting a check in the amount of \$1,015.00 in the mail to petitioners. In their email, respondents also indicated they were well aware of the date by which they needed to return the deposit and didn't need to be reminded of tenant/landlord law: "I am in this business long time enough to know what I am doing." Respondents' email did not provide notice of petitioners' right to dispute the withholding of the deposit before this Board. In addition, interest was not credited to the deposit.

7. Petitioners disputed the withholding of the deposit. Petitioners also argued that the deposit was willfully withheld and requested that the Board award double damages. Petitioners provided respondents with a link to state law and argued that their failure to follow the law demonstrated the willful withholding of the deposit. Respondents argued that the deposit was not willfully withheld; there was damage in the apartment and it was not sufficiently cleaned so they withheld money to repair the damage and to clean. When petitioners said they would go to court to appeal the withholding of \$360 of the deposit, respondents indicated that was fine –

respondents believed their deductions from the deposit were proper and they weren't going to argue about it anymore.

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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 within 30 days; 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. Respondents did not provide petitioners with notice of their right to appeal to this Board within 30 days. Therefore, the Board concludes that respondents forfeited the right to withhold any part of the deposit.

12. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners have also moved for double damages, alleging respondents' failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Petitioners provided respondents with a link to state law to which they replied they were well aware of tenant/landlord laws, had been in business for a long time and knew what they're doing. Respondents indicated they know all about tenant/landlord laws. Consequently, they should be aware of their obligations under city law as well. Respondents' failure to provide notice of petitioners' appeal rights in their statement of deductions demonstrated, at the least, their indifference to city law.

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

Consequently, the Board concludes the amount of the deposit withheld was done so willfully. Therefore, the Board will order double the amount withheld.

13. 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.

14. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERED:

15. Petitioners Olivia Do and Warren Nielsen are entitled to recover from respondents Rene and Arlette Ball the following amounts:

a) \$360.00 of the principal amount of the security deposit improperly withheld after June 14, 2022;

b) \$360.00 double the amount willfully withheld;

c) Interest in the amount of \$3.57 on the entire deposit for the period June 1, 2021 to June 14, 2022; and

d) Additional interest of \$0.002 per day from June 15, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19 day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor

Josh Wronski



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 9/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk
Board Vice Chair

cc: Patrick O'Connor
Ben Heath

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

**In re: Request for Hearing of PATRICK O’CONNOR,)
DYLAN GALLAGHER and LARS ENSTROM)
Regarding Withholding of Security Deposit by) Security Deposit Appeal
BEN HEATH for Rental Unit at 307)
Colchester Ave., downstairs unit)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 8, 2022; the hearing was held remotely via Zoom. Board Vice Chair Betsy McGavisk presided. Board Members Evan Litwin, Olivia Taylor and Josh Wronski were also present. Petitioners Patrick O’Connor, Dylan Gallagher and Lars Enstrom were present and testified. Respondent Ben Heath 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 Ben Heath is the landlord and property manager of a rental unit, 307 Colchester Avenue, downstairs unit, in the City of Burlington which is the subject of these proceedings.

2. Petitioners Patrick O’Connor, Dylan Gallagher and Lars Enstrom moved into the rental unit with a written lease which ran from June 1, 2021 to May 24, 2022. Monthly rent was \$2,625.00.

3. Petitioners paid a security deposit of \$2,625.00 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 24, 2022.

5. On June 6, 2022, respondent sent a statement to petitioners informing them that \$1,295.45 of the deposit was being withheld for cleaning and repairs. Respondent returned \$1,330.98 of the deposit to petitioner. Respondent's statement included the following language: "[y]ou have the right to contest any fees being withheld from the security deposit, and the right to request a hearing before the Burlington Housing Board of Review."

6. Interest in the amount of \$1.43 was credited to the deposit.

7. Petitioners disputed the withholding of part of their deposit on the basis that some of the damage was not attributable to them.

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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). Respondent returned part of the security deposit with an itemized statement which included notice of petitioner's opportunity "to request a hearing before the Burlington Housing Board of Review"; however, that statement failed to include the 30-day deadline to appeal to this Board.

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 within 30 days; 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. The Board concludes respondent's notice of withholding to petitioner was not proper as it did not contain the 30-day deadline for appealing. Therefore, the Board concludes respondent forfeited the deposit.

12. The Board expresses no opinion about the availability of relief in other legal venues.

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

Order

Accordingly, it is hereby ORDERD:

13. Petitioners Patrick O'Connor, Dylan Gallagher and Lars Enstrom are entitled to recover from respondent Ben Heath the following amounts:

- a) \$1,295.45 of the principal amount of the security deposit improperly withheld after June 7, 2022; and
- b) Additional interest of \$0.01 per day from June 8, 2022 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day of September, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Evan Litwin
Evan Litwin

Josh Wronski

/s/ Olivia Taylor
Olivia Taylor