

BURLINGTON HOUSING BOARD OF REVIEW

Monday, August 5, 2019

7:00 p.m.

**Community Room, Burlington Police Department
1 North Avenue**

AGENDA

1. Katie Carpenter, Erin Keller (tenants); First Vermont Properties/Evan Stainman (landlord) (security deposit case) re: 103 N. Winooski Ave, #3
2. Hanna Strouse (tenant); 314 North St LLC (landlord) (security deposit case) re: 314 North St, #1 (postponed from meeting of 7/15/19)
3. Annie Schneider, Tim Boyle, Josh Wronski (tenants); David & Lucy Bogue (landlord) (security deposit case) re: 9 School St
4. Hayley Hancock, Kelsey White, Monica Demers (tenants); Kaanta's Condos LLC (landlord) (security deposit case) re: 47 S. Williams St, Apt. 208

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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 9/17/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Annie Schneider
David Bogue

**In re: Request for Hearing of TIM BOYLE,)
ANNIE SCHNEIDER and JOSH WRONSKI) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by DAVID and LUCY BOGUE)
for Rental Unit at 9 School Street)**

The above-named hearing came before the Housing Board of Review on August 5, 2019. Board Chair Josh O’Hara presided. Board members Betsy McGavisk, Patrick Kearney and Olivia Pena were also present. Board Member Patrick Murphy recused himself from the proceeding citing a friendship with one of the litigants. Petitioners Annie Schneider, Tim Boyle and Josh Wronski were present and testified. David Bogue, landlord of the subject apartment, 9 School Street, was present and testified as well.

4. Petitioners moved out of the rental unit on May 23, 2019. There was some disputed testimony as to turning in the final set of keys, which seems to have ultimately been received by the Respondent not later than May 31, 2019.

5. Respondent sent Petitioner a Notice of withholding within the 14 day period required by law which indicated that there was an accounting for \$1,355.50 of withholding for damage and a balance for \$174.72 of the security deposit as a balance due from Respondent. There was \$30.22 included for accumulated interest. There was unclear testimony as to when the Notice was mailed. The date on the check was June 30, 2019. Petitioners did not claim that Notice was mailed untimely.

6. Respondent withheld \$470.00 for patching and painting 16 walls in the apartment. Respondent withheld \$567.00 for the depreciated value of replacing the refrigerator which he testified arose as a result of damage – that being a dent in the refrigerator door. Respondent withheld \$240.00 for the depreciated value of replacing the dishwasher which he testified arose as a result of 9 missing tines from the dishwasher racks. Respondent withheld \$75.00 for damage to the “Lazy Susan” – attributable to missing plastic pins used to track/hold up the device – and the cost of an improvised repair of “cleat” installation. There was testimony by both parties made as to damages and whether any of the damages constituted anything beyond normal “wear and tear” or not. Respondent acknowledged that both the refrigerator and the dishwasher were still being used by the new replacement tenants in the apartment. Respondent provided photographic evidence of the 16 walls wherein there was a showing of specific “damage” to several but less than half of the 16 walls where tenants had applied a compound to wall damage in what he believed to be a poor attempt to fix wall damage which he indicated made the situation worse thereby requiring sanding and repainting in order to completely and appropriately address the situation. Respondent agreed to withdraw his claim of \$3.50 for the cost of a certified letter in mailing the Notice.

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. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120 (c), includes language mandating the manner for providing a departed tenant with a written statement which itemizing all deductions withheld from a security deposit; specifically it states that "[a] landlord shall return the deposit to a tenant within fourteen (14) days from the date on which the landlord discovers the tenant vacated or abandoned the rental unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date, with a written statement itemizing any deductions. It also states "[t]he landlord shall comply with this section by hand-delivering or sending by certified mail 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." And finally it further states "[i]f a landlord fails to return the security deposit with a statement within fourteen (14) days, the landlord forfeits the right to withheld any portion of the security deposit."

10. Based on the evidence presented, the Board finds that Respondent was entitled to withhold only \$200.00 of the \$470.00 withheld for the patching and painting of walls. The balance of patch and paint work is found to be within the ambit of costs to be borne by the landlord for normal wear and tear after four years of tenant occupancy.

11. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for the dent to the refrigerator door. The refrigerator is still in use and fully functional and there is/was no evidence to show damage in the form of financial loss or cost to the Respondent.

12. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for the broken tines in the dishwasher. The dishwasher is still in use and fully

functional and there is/was no evidence to show damage in the form of financial loss or cost to the Respondent. There is/was no evidence to show that the damage was not due to normal wear and tear to a \$300 dishwasher.

13. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any amount for damage to the Lazy Susan. There was no evidence presented to show that the missing pins derived from anything other than normal wear and tear to that particular brand of Lazy Susan.

ORDER

Accordingly, it is hereby ORDERED:

14. Petitioners Annie Schneider, Josh Wronski and Tim Boyle are entitled to recover from respondents David and Lucy Bogue the following amounts:

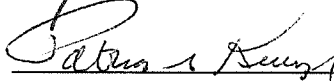
a) \$1155.50.00 of the principal amount of the security deposit improperly withheld after June 6, 2019; and

b) Additional interest of \$0.008 per day from June 7, 2019 until such date as the amount improperly withheld is returned to petitioners.

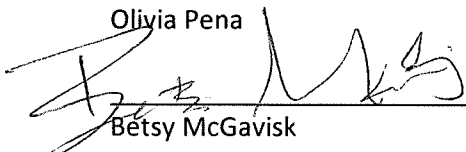
DATED at Burlington, Vermont this 17th day of September, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Olivia Pena


Betsy McGavisk



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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DATED 9/17/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Hayley Hancock
Kaanta's Condos LLC, c/o Nicole Delong

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

In re: Request for Hearing of HAYLEY	)	
HANCOCK, KELSEY WHITE and	)	CITY OF BURLINGTON
MONICA DEMERS Regarding	)	HOUSING BOARD OF REVIEW
Withholding of Security Deposit by	)	
KAANTA'S CONDOS LLC for Rental	)	
Unit at 47 S. Williams St, Apt. 208	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 5, 2019. Board Chair Josh O'Hara presided. Board members Betsy McGavisk, Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Hayley Hancock was present and authorized to represent the other tenants as well and she testified in this matter. Nicole DeLong was present as the Property Manager for Kaanta's Condos LLC and was authorized to appear on behalf of that LLC, landlord of the subject apartment, 47 South Williams Street, Apartment # 208, in this matter and she testified as well.

FINDINGS OF FACT

1. Respondent Kaanta's Condos LLC is the owner of 47 South Williams Street, Apartment # 208, which was rented as a rental unit under a lease contract which is the subject property of this proceeding.
2. Petitioners Hayley Hancock, Kelsey White and Monica Demers were the tenants in the rental unit with a lease which began on June 1, 2018 and ended May 22, 2019.
3. Petitioners paid a security deposit of \$2,150.00. Rent for the 12 month lease was \$2150.00 per month (\$2,100.00 if paid before the first of the month). Under the terms of the lease, Petitioners were to receive back the security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners moved out of the rental unit on May 21, 2019.

5. Respondent sent Petitioner a Notice of withholding within the 14 day period required by law which indicated that there was an accounting for \$449.00 of withholding for damage and a balance for \$1712.00 of the security deposit as a balance due to Respondent. There was \$10.75 included for accumulated interest.

6. Respondent provided two invoices totaling \$449.00 with a check out inventory which broke down the categories of the deductions. There were \$39.00 for light bulb deductions which the Petitioner contested, claiming that all bulbs were working when they departed. There were \$55.00 in additional material costs (burner pans, a refrigerator shelf, screws and anchors or an organizer and patching materials) and there was \$125.00 deducted for the labor costs related to the light bulb installation and the “repairs” and installations related to the other \$55.00 of materials. Tenant testified that all of these costs were for normal wear and tear as described in the lease. Respondent testified that \$230.00 for “cleaning” which was for not leaving the apartment as they had found it. Petitioner testified that any cleaning was related to “normal wear and tear” (including the burner pans which had been wiped clean before the move out) over the course of the year and that they had been required to move out by May 22, 2019 under the lease so that the respondent could do a “deep clean” of the apartment in order to prepare the unit for the next tenants.

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. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120 (c), includes language mandating the manner for providing a departed tenant with a written statement which itemizing all deductions withheld from a security deposit; specifically it states that "[a] landlord shall return the deposit to a tenant within fourteen (14) days from the date on which the landlord discovers the tenant vacated or abandoned the rental unit, or the date the tenant vacated the dwelling unit, provided the landlord received notice from the tenant of that date, with a written statement itemizing any deductions. It also states "[t]he landlord shall comply with this section by hand-delivering or sending by certified mail 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." And finally it further states "[i]f a landlord fails to return the security deposit with a statement within fourteen (14) days, the landlord forfeits the right to withheld any portion of the security deposit."

10. Based on the evidence presented, the Board finds that Respondent was not entitled to withhold any of \$449.00 which was withheld. The testimony of Petitioner was deemed credible by the Board as to the fact that all of the lightbulbs were working upon departure from the unit, but in any event the price charged for the lightbulbs (\$39.00) was excessive and is not accepted as proper by the Board. All of the other evidence as to costs and repairs was deemed by the Board as falling within the ambit of "normal wear and tear" and is, therefore, deemed by the Board as costs to be borne by the Respondent.

ORDER

Accordingly, it is hereby ORDERED:

11. Petitioners Hayley Hancock, Kelsey White and Monica Demers are entitled to recover from respondent Kaanta's Condos LLC the following amounts:

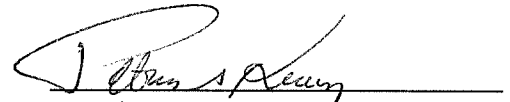
a) \$449.00 of the principal amount of the security deposit improperly withheld after May 22, 2019; and

b) Additional interest of \$0.003 per day from May 23, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 17th day of September, 2019.

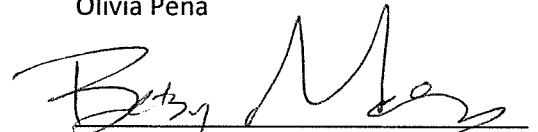
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Patrick Murphy


Olivia Pena


Betsy McGavisk

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 946-10-19 Cncv

Kaanta's Condos, LLC,
Plaintiff

v.

Hayley Hancock,
Kelsey White,
Monica Demers,
Defendants

VERMONT SUPERIOR COURT
FILED

JAN 23 2020

CHITTENDEN UNIT

RULING ON APPEAL

This is an appeal from the Burlington Housing Board of Review. The Board found that appellant Landlord had improperly withheld funds from a security deposit. Landlord appeals.

There are two issues here. Landlord first argues that because the Board did not issue its ruling within 30 days, the ruling should be vacated. The 30-day period comes from the Burlington Code of Ordinances § 18-57. That states that “in no event” shall the Board’s decisions be issued more than 30 days after hearing. However, the ordinance imposes no penalty for failing to meet that deadline.

Our Supreme Court has held that language that on its face appears mandatory, such as the words “must” or “shall,” is not always what it seems. “[A] statutory time limit is mandatory only if it contains both an express requirement that an action be undertaken within a particular amount of time *and a specified consequence for failure to comply with the time limit.*” State v. Singer, 170 Vt. 346, 348 (2000) (emphasis added), citing In re Mullestein, 148 Vt. 170, 173 (1987). There is no consequence stated in the ordinance for a failure to comply with the thirty-day deadline. Thus, under Singer and Mullestein, the

time limits are directory rather than mandatory. The failure to comply with the deadline is therefore not a basis for vacating the Board's order.

Landlord next argues that the Board failed to consider all of the evidence, pointing to the many photos submitted purportedly showing all the work that was required after tenants left. The court's only role here is to determine whether the Board had "any reasonable basis" for its decision. In re Soon Kwon, 2011 VT 26, ¶ 6, 189 Vt 598.

The Board found Tenants more credible on the issue of lightbulbs, and this court cannot second-guess credibility determinations. Thus, the only issue is whether the evidence could support the Board's finding that all the other charges were for things that would be considered "normal wear and tear." That is defined in the Burlington Code as "the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances . . ." Burlington Code §18-2. The lease here has the same definition. Lease ¶ 4.3.

The court has reviewed the photos and many show nothing of any consequence. In many the court cannot see anything wrong at all. Some show dust, a few items on the floor, or minor marks on the walls. The only ones of any import, other than those of lightbulbs, show burned-on food on a stove burner, and minor food spills on a cabinet and a refrigerator. The Board could reasonably conclude that basic cleaning between tenants is a normal duty of landlords, and not something for which the security deposit can be applied. Likewise, minor marks on walls are a normal incident of tenancy.

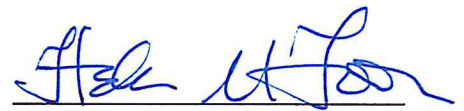
However, the evidence was undisputed that one of the stove burners (\$40) had burned-on crud and had to be replaced. That was a reasonable deduction as beyond normal wear and tear. Likewise, the evidence supported a finding of a broken curtain rod (\$20), and two broken refrigerator shelves (included as part of a \$40 charge that included

cleaning). These, too, are beyond normal wear and tear. Since the charge for the shelves is combined with a cleaning charge, the court will treat half the charge as being for the shelves. Thus, the total properly deducted was \$80.

Order

The Board's decision is affirmed in part and reversed in part. Landlord is ordered to return \$369 to the tenants within 14 days.

Dated at Burlington this 23rd day of January, 2020.



Helen M. Toor
Superior Court Judge