

BURLINGTON HOUSING BOARD OF REVIEW

Monday, August 3, 2020

7:00 p.m.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89192018846?pwd=MEFnWERZeVBVTTI4VjE3T1lZT1lIQT09>

Passcode: 907466

Or iPhone one-tap :

US: +13126266799,,89192018846#,,,,,0#,,907466# or +19292056099,,89192018846#,,,,,0#,,907466#

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: 891 9201 8846

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International numbers available: <https://us02web.zoom.us/j/89192018846?pwd=MEFnWERZeVBVTTI4VjE3T1lZT1lIQT09>

AGENDA

1. Rebecca Shames, Meg Trogolo, Laurel Hebert, Kate Burba, Olivia Lopez, Nicole Irizamy (tenants); Martha Lang (landlord) (security deposit case) re: 140 Colchester Ave (postponed from 7/20/20 mtg)
2. Kathryn Burnham, Nina Matt, Emma Radeka, Luise Ruchs (tenants); Bissonette Properties (landlord) (security deposit case) re: 47 Pitkin St
3. Nathaniel Schramm, Abigail Schramm, Rebecca Towle (tenants); Bruce & Susan Thibaud (landlord) (security deposit case) re: 119 No. Willard St, #3
4. Helena Gaffney, Alvaro Ortega, Hailey Davis (tenants); VOJEL Rentals (landlord) (security deposit case) re: 34 Colchester Ave, Apt. 1

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.



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: Luise Fuchs (for all tenants)
Bissonette Properties

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

**In re: Request for Hearing of KATHRYN BURNHAM,)
NINA MATT, LUISE FUCHS and EMMA)
RADEKA Regarding Withholding of Security) Security Deposit Appeal
Deposit by BISSONETTE PROPERTIES for)
Rental Unit at 47 Pitkin Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2020; the meeting was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O'Hara and Charlie Gliserman were also present. Petitioners Nina Matt and Luise Fuchs were present and testified. Respondent Bissonette Properties was represented at the hearing by Addy Bara, Christina Bissonette, Margo Yeadon and Lauren Austin who 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 Bissonette Properties is the owner of a rental unit, 47 Pitkin Street, in the City of Burlington which is the subject of these proceedings. Addy Bara, Christina Bissonette, Margo Yeadon and Lauren Austin are property managers for respondent.

2. Petitioners Kathryn Burnham, Nina Matt, Luise Ruchs and Emma Radeka moved into the rental unit with a written lease which ran from June 1, 2019 to May 25, 2020. Petitioners renewed the lease in October 2019 for an additional year beginning on May 25, 2020 and ending on May 25, 2021. Monthly rent was \$3125.00.

3. Petitioners paid a security deposit of \$2469.00 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 June 1, 2020.

5. On June 10, 2020, respondent sent, by certified mail, a statement to petitioners in accordance with ordinance requirements. Said statement itemized deductions in excess of the total amount of the security deposit. In addition, the statement notified petitioners they were responsible for rent until the unit was re-rented.

6. On July 16, 2020, respondent sent petitioners a final statement as the unit was re-rented beginning on August 1, 2020.

7. Petitioners disputed the charge for unpaid rent claiming the unit was uninhabitable because it was infested with mice; petitioners also claimed that respondent was not doing enough to address the problem. Petitioners first complained about mice in the unit on January 31, 2020; in response to their complaint, respondent sent their maintenance person to set traps and assess the situation. On February 8, 2020, petitioners requested that respondent send an exterminator to the unit because there were still mice in the unit. An exterminator went to the unit on February 13, 2020 to set traps. Thereafter, the exterminator went to the unit on February 20, February 27, March 17, March 19, March 24 and April 2 with plans to continue weekly service at the unit. During the visits, the exterminator set traps, collected 1-2 mice each time and identified areas of entry to be plugged. Respondent's maintenance person also went to the unit on January 30, February 20, March 17, March 18, March 24, April 2 and April 3; the maintenance person set traps, met with the exterminator and plugged gaps and holes identified by the exterminator as possible entry points for mice.

8. Respondent argued that they responded swiftly to petitioners' complaints and were addressing the problem. Respondent believed petitioners were merely using the mice in the unit as an excuse to move out.

9. Each party argued that the other party broke the lease. Petitioners argued that respondents broke the lease because the unit was uninhabitable. Respondent argues that petitioners broke the lease when they moved out before the lease expired.

10. The final statement sent to petitioners on July 16, 2020 indicated they owed respondent \$6652.63 in unpaid rent.

11. The itemized statement indicated \$4.05 was deducted from the deposit for “certified return mail” and \$430.00 for cleaning. There is also a stop payment fee of \$100.00 for May and June rent attributable to Nina Matt.

Conclusions of Law

12. 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.

13. 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.

14. 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.

15. The dispute between the parties centers around whether or not the unit was habitable. Petitioners argue it was not, and therefore, they were entitled to break the lease and they do not owe any unpaid rent. Respondent argues they addressed the problem swiftly and petitioners used the mice in the unit as an excuse to move out before the lease ended. State law, 9 V.S.A. Sec. 4458, addresses a landlord's obligations for habitability and tenant remedies. It is beyond the purview of this Board to decide on the question of habitability; we defer this issue to the appropriate court for resolution of whether or not unpaid rent is owed.

16. Petitioners did not dispute the cleaning charges. With respect to the deductions for certified return mail and stop payment fee, the Board concludes these deductions were not proper. A security deposit may be withheld for damages beyond normal wear and tear, for unpaid rent, for unpaid utilities and for the cost of the landlord to remove abandoned items from a rental unit. Minimum Housing Code Sec. 18-120(c). The certified mail fee is a cost of doing business. The stop payment fee does not reflect the actual cost to respondent when Nina Matt stopped payment on checks; that cost can be readily ascertained by respondent.

Order

Accordingly, it is hereby ORDERED:

17. Petitioners Nina Matt, Luise Fuchs, Kathryn Burnham and Emma Radeka are entitled to recover from respondent Bissonette Properties the following amounts:

a) \$104.05 of the principal amount of the deposit improperly withheld after June 15, 2020; and

b) Additional interest of \$0.001 per day from June 16, 2020 until such date as the amount improperly withheld is returned to petitioners.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy
Patrick Murphy

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman



HOUSING BOARD OF REVIEW

City of Burlington

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**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: Nathaniel Schramm
Bruce & Susan Thibaud, c/o Neville Companies

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

In re: Request for Hearing of Nathaniel Schramm,)
Abigail Schramm and Rebecca Towle Regarding)
Withholding of Security Deposit by Bruce and) Security Deposit Appeal
Susan Thibaud for Rental Unit at 119 North)
Willard Street, #3)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2020; the heard was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O'Hara and Charlie Gliserman were also present. Petitioner Nathaniel Schramm was present and testified. Respondents Bruce and Susan Thibaud were represented at the hearing by Coty Fitzgerald and Jeffrey Raab who were present and testified. Also appearing and testifying as witnesses were Dave Schramm and Alice Goodridge-Schramm.

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 Bruce and Susan Thibaud are the owners of a rental unit, 119 North Willard Street, #3, in the City of Burlington which is the subject of these proceedings. Neville Companies manages the property.
2. Petitioners Nathaniel Schramm, Abigail Schramm and Rebecca Towle moved into the rental unit with a written lease which ran from June 1, 2019 to May 24, 2020. Monthly rent was \$1755.00.
3. Petitioners paid a security deposit of \$1755.00 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, 2020.

5. On June 3, 2020, Neville Companies sent an estimate of deductions from the deposit to petitioners in accordance with ordinance requirements; Neville Companies returned \$987.92 to them at that time. On June 18, 2020, Neville Companies sent a revised and final statement to petitioners and returned an additional \$291.64 to them. Neville Companies itemized 2 deductions from the deposit: \$182.69 to patch holes and \$293.67 to clean. Petitioners disputed the deduction for cleaning.

6. Interest in the amount of \$0.92 was credited to the deposit.

7. The deduction for cleaning amounted to 4.5 hours of labor at a rate of \$64/hour¹. The deduction also included a minimal amount for supplies, a service fee and travel charge. Neville Companies billed respondents for the work and respondents passed the charge onto petitioners even though Neville Companies indicated at the move-out inspection that everything was okay in the apartment. The invoice for cleaning noted that the burner was wiped down, the wall and window next to the stove was wiped down, and cobwebs in a bedroom and across from the kitchen were wiped down; the only supplies needed were cleaner and paper towels. Coty Fitzgerald testified that he believed there was an excessive amount of grease on the walls and stove that required cleaning. Petitioners testified they left the apartment much cleaner than when they moved into it. In addition, petitioners testified they thoroughly cleaned the entire kitchen before moving out. When questioned by the Board about the rate of charge for cleaning (which seemed unusually high) Coty Fitzgerald simply noted that's what the hourly rate is.

¹ The same hourly rate was charged for patching holes in walls.

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). Timely notice was provided.

11. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay,

and for expenses required to remove from the rental unit articles abandoned by the tenant.

Section 18-2 defines normal wear and tear 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 by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well as its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

12. Respondents deducted \$182.69 of the deposit for cleaning. Petitioners cleaned the apartment before moving out. The cleaning invoice indicates the cleaning done consisted of wiping down the stove, a wall and some cobwebs. Petitioners made reasonable use of the property and there is no evidence to suggest they abused it. Consequently, the Board concludes the cleaning done by respondents was attributable to normal wear and tear. Even if the Board had concluded otherwise, we conclude that the hourly rate of \$64/hour for cleaning was unreasonable. In the Board's experience, most cleaners seem to charge \$25-35/hour for cleaning.

Order

Accordingly, it is hereby ORDERED:

13. Petitioners Nathaniel Schramm, Abigail Schramm and Rebecca Towle are entitled to recover from respondent Bruce and Susan Thibaud the following amounts:

a) \$293.67 of the principal amount of the security deposit improperly withheld after June 7, 2020; and

b) Additional interest of \$0.002 per day from June 8, 2020 until such date as the amount improperly withheld is returned to petitioners.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy
Patrick Murphy

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman



HOUSING BOARD OF REVIEW

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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 9/4/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

Board Chair

cc: Helena Gaffney
VOJEL Rentals

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

**In re: Request for Hearing of Helena Gaffney,)
 Alvaro Ortega, and Hailey Davis)
 Regarding Withholding of Security) Security Deposit Appeal
 Deposit by VOJEL, Inc. for Rental Unit)
 at 34 Colchester Avenue, Unit 1)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2020; the hearing was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O'Hara and Charlie Gliserman were also present. Petitioner Helena Gaffney was present and testified. Respondent VOJEL, Inc. was represented at the hearing by Zalman Wilhelm who 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 VOJEL, Inc. is the owner of a rental unit, 34 Colchester Avenue, Unit 1, in the City of Burlington which is the subject of these proceedings. Zalman Wilhelm manages the property.

2. Petitioners Helena Gaffney, Alvaro Ortega, Hailey Davis and 3 others moved into the rental unit with a written lease which ran from June 3, 2019 to May 28, 2020. Monthly rent was \$4200.00.

3. Petitioners paid a security deposit of \$4200.00 to respondent. Petitioners and their roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Helena Gaffney represented all the tenants at the

hearing; she was authorized by her former roommates to receive any money returned to them which she would then distribute accordingly.

4. Petitioners and their roommates vacated the apartment on May 31, 2020.

5. On June 16, 2020, respondent emailed petitioners letting them know that they were still calculating the costs of deductions from the deposit for cleaning and removing items from the apartment. At that time, they provided an itemized list of deductions totaling \$1340.00. Neither respondent's email nor the list of deductions informed them of their right to appeal the withholding of the deposit.

6. On June 30, 2020, respondent mailed a statement to each tenant indicating that a total of \$2190.00 was being withheld from their deposit for disposal of items from the apartment and cleaning. Respondent returned \$335.00 to each tenant. The statement did not include notice of petitioners' right to appeal the withholding of the deposit to this Board.

7. Interest was not credited to the deposit.

8. Petitioners disputed the timeliness of respondent's notice and return of the deposit. Zalman Wilhem indicated respondent needed time to estimate the damages and did not know what the final amount of the deductions would be until after June 22 when a second cleaning of the apartment was scheduled.

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).

12. 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

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

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 statement and by failing to return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

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.

Order

Accordingly, it is hereby ORDERED:

14. Petitioner Helena Gaffney, on behalf of all the tenants, is entitled to recover from respondent VOJEL, Inc. the following amounts:

a) \$2190.00 of the principal amount of the deposit improperly withheld after June 14, 2020;

b) Interest in the amount of \$10.87 on the entire deposit for the period June 1, 2019 through June 14, 2020; and

c) Additional interest of \$0.02 per day from June 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy
Patrick Murphy

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman



HOUSING BOARD OF REVIEW

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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 9/8/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Nicole Irizarry (for all tenants)
Martha Lang

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

**In re: Request for Hearing of Laurel Hebert,)
Nicole Irizarry, Rebecca Shames, Meg)
Trogolo, Kate Burba and Olivia Lopez)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by Martha Lang for Rental Unit)
at 140 Colchester Avenue)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2020; the hearing was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O'Hara and Charlie Gliserman were also present. Petitioners Laurel Hebert and Nicole Irizarry were present and testified. Respondent Martha Lang was also present and testified. Appearing and testifying as a witness was Jennifer Rose.

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 Martha Lang is the owner of a rental unit, 140 Colchester, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Laurel Hebert, Nicole Irizarry, Kate Burba, Olivia Lopez, Rebecca Shames and Meg Trogolo moved into the rental unit with a written lease which ran from June 1, 2019 to May 24, 2020. Monthly rent was \$3200.00.
3. Petitioners paid a security deposit of \$3200.00 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, 2020.

5. On June 3, 2020, respondent sent, by certified mail, each tenant a written statement related to their security deposit. Said statement itemized one deduction of \$40.08 for water. Interest in the amount of \$1.00 was credited to the deposit. The statement did not include notice of petitioners' right to appeal the withholding to this Board.

6. Respondent returned \$3,160.92 of the deposit to Laurel Hebert in one check made payable to: Kate Burba + Nicole Irizarry + Rebecca Shams + Laurel Hebert + Meg Trogolo + Olivia Lopez. Petitioners had requested that one check be sent to, and made payable to, Laurel Hebert and she would distribute it among all the other tenants. Petitioners disputed the way in which the deposit was returned to them, claiming that they were unable to deposit or cash the check because it was made payable to all of them using the connector "+" and they no longer all live in Burlington. In support of their argument, petitioners submitted written statements from 2 banks, People's United Bank and Citizens Bank. People's United wrote, "Check 112 written with "+" would require all parties in the "Pay to Order line" to sign the back of the check and be present to deposit or Cash." The written statement from Citizens Bank indicated that a check showing multiple payees joined by the word "and" or "&" requires the endorsement of all payees. As long as all payees' endorsements are verified, Citizens Bank indicated a check could be cashed or deposited into payees' joint account or deposited into one of the payee's individual account; both payees are not required to be present as long as the check is endorsed by both payees and both endorsements can be verified. If all payees' endorsements cannot be verified or if all payees did not endorse the check, the bank stated a check could only be deposited into an account titled with all payees' names. When petitioners asked respondent to write out a new check made payable to just one of them, she refused; she stated they could cash the check when they were all back in Burlington or they could meet someplace to sign the check and then cash it.

7. Respondent testified that when she met with petitioners on May 24, 2020 she was laughed at, mocked and harassed by petitioners. Respondent also testified that Laurel Hebert waved a paper in her face, demanding that respondent sign it. Petitioners denied respondent's characterization of their meeting. As a result of the May 24 meeting, respondent testified she was afraid petitioners would take some kind of legal action against her and felt she had to protect herself. Consequently, when she returned the deposit, she returned it in one check made payable to all the tenants. Although respondent's normal practice is to divide the deposit return among all the tenants and send them separate checks, she did not do so in petitioners' case because she felt the need to protect herself and she did not like petitioners' attitude towards her. When asked why she was unwilling to write a new check (payable to one tenant) she stated she was not sure she was required to do so even though she was told repeatedly by petitioners that they could not deposit or cash it.

8. Petitioners also requested that the Board award them double damages because respondent willfully withheld the deposit. Petitioners argued that respondent's unwillingness to give them a check that could be deposited or cashed demonstrated her willful withholding of the deposit.

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).

12. 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 statement.

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

Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. With respect to the manner in which the deposit was returned (a check made payable to all the tenants), petitioners argue they are unable to cash or deposit the check. While at least one bank indicated the check could be cashed or deposited as long as it was endorsed by all the payees and all payees' endorsements were verified, several factors arising out the COVID-19 pandemic - from travel and business restrictions to significant postal service delays and public health dangers - rendered such a scenario exceedingly difficult. Indeed, petitioners demonstrated multiple unsuccessful attempts to access the funds owed to them. It was as if the check were sent to the petitioners in a steel safe for which they had been given no key or combination. Therefore, the majority of the Board is of the opinion that petitioners were effectively unable to cash or deposit the check because they no longer live in Burlington; they could not travel to one place in order to sign a check; and attempting to do so could have posed serious risks to public and personal health. In addition, since respondent did not provide notice of petitioners' appeal rights, she forfeited the right to withhold money from the deposit for the water charge. Consequently, the Board will order that a new check be issued for the entire amount of the deposit; petitioners will be ordered to return the check made payable to all of them to respondent.

14. Petitioners have also moved for double damages, alleging that respondent's failure to return their security deposit in a manner in which they could cash or deposit was willful. If the failure to return a security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). As the Superior Court has recently held, "willful" for purposes of the ordinances can mean violating the ordinance by design, by intention, or 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). Respondent is aware of the obligation to return a deposit. When petitioners told her they were unable to deposit or cash the check and asked her to reissue a check made payable to one of them, she refused. Instead, she suggested they could all meet someplace to sign the check. Petitioners repeatedly told her they were unable to deposit or cash the check. In her materials submitted to the Board, respondent has included an unsigned form (Appendix J: Return of the Security Deposit Agreement) which seeks a written commitment from the tenants that they “agree to accept a check for [amount left blank] as a fair and just amount on the return of my security deposit at [address left blank]. I and the other tenants will not take legal action against Martha R. Lang. I agree to distribute this money to the other tenants who signed the lease.” Not only did the respondent omit notice of the petitioners right to appeal the withholding to the Board in her security deposit transmittal, she went a step further in demanding that they sign away their legal rights to appeal in order to receive the security deposit in the amount offered. This “Return of the Security Deposit Agreement” also suggests that the respondent’s routine practice is to return the deposit to one tenant for distribution to the others (“I agree to distribute this money to the other tenants who signed the lease.”) In this case, the agreement was not signed, and the respondent then retaliated by creating a significantly burdensome means by which to obtain funds owed, all in the context of a worldwide pandemic with particularly devastating impacts in the states where the tenants now reside. The practice of conditioning receipt of a security deposit upon acceptance of an agreement not to legally challenge the amount or manner in which it is provided by a landlord constitutes a serious undermining of the basic protections afforded to tenants under the City of Burlington ordinance and Vermont state law with respect to security deposits. When coupled with the failure to notify tenants of their right to appeal to this Board, this sort of agreement serves only to further obscure

a tenant's right to disagree with the landlord's decision and the process through which to do it, seemingly by design. The Board concludes respondent's actions with respect to the return of the deposit demonstrate were willful.

Order

Accordingly, it is hereby ORDERED:

15. Petitioners shall return to respondent Martha Lang check #112 make payable to all of them in the amount of \$3,160.92

16. Petitioners are entitled to recover from respondent Martha Lang the following amounts:

- a) \$3,201.00 of the security deposit improperly withheld after June 7, 2020.
- b) \$3200.00, double the amount of the security deposit willfully withheld; and
- c) Additional interest of \$0.002 per day from June 8, 2020 until such date as the amount improperly withheld is returned to petitioners.

17. Respondent shall comply with this order in one of two ways: either by issuing a check made payable to Laurel Hebert, the person designated by the tenants to receive the return of the deposit, who will then be responsible for distributing a share to each of the other tenants **OR** by issuing individual checks to each petitioner for an equal share of the amount ordered to be returned.

DATED at Burlington, Vermont this 8th day of September, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman

I respectfully dissent from the Board's conclusion that the Landlord willfully withheld the security deposit within the meaning of Burlington's security deposit ordinance, thereby entitling the Tenants to double damages. I agree with the rest of my colleagues' well-reasoned decision.

To be clear, I find the Landlord's decision not to cooperate with the Tenants' request to be petty, unprofessional, and reckless. Dr. Lang's decision to write the check as she did—requiring all the Tenants to gather together again at a bank to sign the check, so signatures could be verified, after all had ceased living together—was undoubtedly made so it would be hard for the Tenants to get their money back. The Landlord did not provide the Board with a business or legal reason for doing this, and in fact said that her usual business practice is to write separate checks to her tenants. I am left to conclude the Landlord wrote the check this way to spite the Tenants after their May 24 meeting. And the Landlord did this in the context of the ongoing novel coronavirus pandemic, which has made gathering in groups indoors, such as at a bank, dangerous and a violation of the law in some places. The Landlord wrote the check in early June, nearly three months after a state of emergency had been declared by Governor Scott, a time by which the Landlord ought to have known not only the danger of asking the Tenants to gather together, but also that it was unlikely that they could. The Landlord's actions display disregard for the risk to the Tenant's well-being and a clear attempt to make it as difficult as possible for the Tenants to get their money back.

While I think the Landlord's conduct was low, I cannot say that it meets the standard for double damages. We have awarded double damages in cases where landlords have been indifferent or obstinate to their legal obligations, choosing to violate the ordinance even though they know or should know better. See *Bennum & Alexander v. Harrington* (Burl. Housing Bd. of Rev. Mar. 6,

2020)² and *Paris, et al v. Kwon* (Burl. Housing Bd. of Rev. Sept. 17, 2019).³ Although the Landlord made it difficult for the Tenants to cash the check, I cannot say that the Landlord intended to evade or disregard her legal obligations altogether. The banks the Tenants have consulted said that the check is cashable, although doing so is difficult. Because the Landlord returned the deposit, albeit in a form that is hard for the Tenants to cash,⁴ I am therefore not convinced that the Landlord failed to return the deposit, and if she did fail, that the failure was willful. I would not award double damages.

/s/ Joshua S. O'Hara
Joshua S. O'Hara
Board Chair

² Available at

<https://www.burlingtonvt.gov/sites/default/files/Agendas/SupportingDocuments/Bennum%20%26%20Alexander%20v%20Harrington.pdf> (last visited Aug. 25, 2020).

³ Available at

<https://www.burlingtonvt.gov/sites/default/files/Agendas/SupportingDocuments/Paris%20et%20al%20v.%20Kwon.pdf> (last visited Aug. 25, 2020).

⁴ In recent months, the Board has seen disputes over the ways parties make rent payments and security-deposit returns. Here, it is how a check was written, and in other cases, the disputes have been about electronic payments versus paper checks, and whether the paying party should have used one form or another. In the absence of a lease term or some other agreement, I am reluctant to have the Board spell out how people should pay each other. The parties should be able to work that out on their own, with a case like this being the exception.

BURLINGTON HOUSING BOARD OF REVIEW

Monday, August 3, 2020

7:00 p.m.

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

Webinar ID: 891 9201 8846

Passcode: 907466

Minutes

Members present: Josh O'Hara, Patrick Murphy, Charlie Gliserman

Staff present: Lisa Jones

1. Rebecca Shames, Meg Trogolo, Laurel Hebert, Kate Burba, Olivia Lopez, Nicole Irizamy (tenants); Martha Lang (landlord) (security deposit case) re: 140 Colchester Ave (postponed from 7/20/20 mtg)
Present were: Laurel Hebert, Nicole Irizarry, Jennifer Rose, Martha Lang; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing concluded.
2. Kathryn Burnham, Nina Matt, Emma Radeka, Luise Ruchs (tenants); Bissonette Properties (landlord) (security deposit case) re: 47 Pitkin St
Present were: Nina Matt, Luise Ruchs, Addy Bara, Christina Bissonette, Margo Yeardon, Lauren Austin; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing concluded.
3. Nathaniel Schramm, Abigail Schramm, Rebecca Towle (tenants); Bruce & Susan Thibaud (landlord) (security deposit case) re: 119 No. Willard St, #3
Present were: Nathaniel Schramm, Coty Fitzgerald, Jeffrey Raab, Dave Schramm, Alice Goodridge-Schramm; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing concluded.
4. Helena Gaffney, Alvaro Ortega, Hailey Davis (tenants); VOJEL Rentals (landlord) (security deposit case) re: 34 Colchester Ave, Apt. 1
Present were: Helena Gaffney, Zalman Wilhelm; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing concluded.