

BURLINGTON HOUSING BOARD OF REVIEW

Monday, July 20, 2020

7:00 p.m.

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

<https://us02web.zoom.us/j/82025264413?pwd=dHhtWHZOUzd6clBBQmp4SFIONDIzdz09>

Password: 427010

Or Telephone:

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

US: +1-929-205-6099 or +1-301-715-8592 or +1-312-626-6799 or +1-669-900-6833 or

+1-253-215-8782 or +1-346-248-7799

Webinar ID: 820 2526 4413

Password: 427010

International numbers available: <https://us02web.zoom.us/j/82025264413?pwd=dHhtWHZOUzd6clBBQmp4SFIONDIzdz09>

AGENDA

1. Rachel Smith & Tanya Ocker (tenants); Bissonette Properties (landlord) (security deposit case) re: 5 North St
2. Rebecca Shames, Meg Trogolo, Laurel Hebert, Kate Burba, Olivia Lopez, Nicole Irizamy (tenants); Martha Lang (landlord) (security deposit case) re: 140 Colchester Ave
3. Jacob Carr, Shailyn Wright, Morgan Siestlad (tenants); Greg Casto (landlord) (security deposit case) re: 72 Grant St
4. Ethan Waxman (tenant); Michelle Rocheleau (landlord) (security deposit case) re: 47 So. Williams St Unit 203

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 8/11/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Rachel Smith & Tanya Ocker
Bissonette Properties, attn: Addy Bara

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

**In re: Request for Hearing of RACHEL SMITH)
And TANYA OCKER Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
BISSONETTE PROPERTIES for Rental)
Unit at 52A North Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 20, 2020; the meeting was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioners Rachel Smith and Tanya Ocker were present and testified. Respondent Bissonette Properties was represented at the hearing by Addy Bara 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, 52A North Street, in the City of Burlington which is the subject of these proceedings. Addy Bara manages the property.
2. Petitioners Rachel Smith and Tanya Ocker moved into the rental unit with a written lease which ran from June 1, 2018 to May 25, 2019 and was renewed for an additional year. Monthly rent was \$1746.
3. Petitioners paid a security deposit of \$1746.00 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 25, 2020.

5. On June 3, 2020, respondent sent a written statement to petitioners in accordance with ordinance requirements. Said statement itemized damages of \$414.05. Respondent returned \$1340.68 of the deposit to petitioners. Petitioners disputed all the deductions on the basis that the damages were part of normal wear and tear.

6. Interest in the amount of \$8.73 was credited to the deposit.

7. Respondent deducted \$90.00 from the deposit to touch up the paint on the walls throughout the apartment. During their tenancy, petitioners hung items on the walls using thumb tacks; whenever possible they used existing holes to hang items on nails. Petitioners were very mindful of how they hung items on the walls. Photos of the unit after petitioners moved out indicate there were some small nail holes in the walls, but nothing extraordinary.

8. Respondent deducted \$40.00 for a broken blind that needed to be replaced. Petitioners described the blinds as being very brittle and subject to cracking. During their tenancy, respondent replaced a couple of blinds. Petitioners argued the damaged blind was part of normal wear and tear. Addy Bara testified she believed petitioners' cat scratched at the blind and broke it. Petitioners had a cat in the apartment for which they paid an additional monthly charge of \$25.00.

9. Respondent deducted a total of \$280 for cleaning charges: \$75 to clean baseboards, \$60 to clean the oven, \$30 to clean the tub, \$15 to clean the bathroom sink, \$15 to clean the washer/dryer, \$25 to clean the bathroom fan and \$60 to sweep mop the floors throughout the unit. Addy Bara testified that respondent's cleaners are paid approximately \$35/hour plus materials. The lease indicates the rate of charge for cleaning is \$40/hour. However, the invoice from the cleaners indicates their rate of charge was \$25/hour. Prior to moving out of the unit, petitioners went through a checklist provided by respondent of what to do when vacating.

Petitioners cleaned all the items on the checklist, including those items for which they were charged. Petitioners argued the cleaning deductions were all part of normal wear and tear. Photos submitted by respondent indicate the apartment was clean when petitioners moved out.

10. Respondent also deducted \$4.05 from the deposit for “certified return mail”.

Conclusions of Law

11. The City of Burlington’s security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

12. The State of Vermont’s Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to “be implied in all rental agreements” to which it is applicable. 9 V.S.A. Sec. 4453.

13. Under the city ordinance, as well as state law (the terms of which must be implied in the parties’ rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord’s written statement. Minimum Housing Code Sec. 18-120(c). 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.

14. Petitioners disputed all the deductions on the basis that the damages cited by respondent were part of normal wear and tear. 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. It is clear from the evidence that petitioners took care of the unit during their tenancy and cleaned it before they moved out. They made reasonable use of the property and did not cause any damage to it. The cleaning and painting done by respondent was minimal and to be expected after a 2-year tenancy. The Board concludes that the painting and cleaning, and the replacement of a blind was part of normal wear and tear, and thus the deductions are not allowed.

15. With respect to the deduction for the certified mail fee, the Board concludes the charge is not for damage, but rather, part of the cost of doing business. Therefore, the deduction is not allowed.

Order

Accordingly, it is hereby ORDERED:

16. Petitioners Rachel Smith and Tanya Ocker are entitled to recover from respondent Bissonette Properties the following amounts:

- a) 414.05 of the principal amount of the deposit improperly withheld after June 8, 2020;
and
- b) Additional interest of \$0.003 per day from June 9, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 11th day of August, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman



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 8/11/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Ethan Waxman
Dale & Michelle Rocheleau, HG Properties LLC

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

**In re: Request for Hearing of ETHAN WAXMAN)
Regarding Withholding of Security Deposit by) Security Deposit Appeal
HG PROPERTIES LLC for Rental Unit at)
47 So. Williams St, Unit 203)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on July 20, 2020; the meeting was held electronically via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Olivia Pena, Betsy McGavisk and Charlie Gliserman were also present. Petitioner Ethan Waxman was present and testified. Dale Rocheleau and Michelle Rocheleau were present and testified on behalf of respondent HG Properties LLC. Also testifying was Hollie Waxman.

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 HG Properties LLC is the owner of a rental unit, 47 So. Williams St., Unit 203, in the City of Burlington which is the subject of these proceedings. Dale Rocheleau and Michelle Rocheleau manage the property.
2. Petitioner Ethan Waxman and his roommate moved into the rental unit with a written lease which ran from June 1, 2019 to May 24, 2020. Monthly rent was \$1650.00.
3. The amount of the security deposit was \$1650.00; petitioner's share of the deposit was \$825.00. Petitioner and his roommate were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on May 26, 2020.

5. On June 3, 2020, respondent sent petitioner a statement in accordance with ordinance requirements. Said statement itemized one deduction of \$285.00 in late fees from the deposit. Interest in the amount of \$0.83 was credited to the deposit. Petitioner and his former roommate each received a check in the amount of \$682.91. Petitioner disputed the deduction.

6. Both parties testified with respect to the deduction of \$285.00 for late fees. Respondent attributed the charge to petitioner's rent being late in July 2019, August 2019, September 2019, November 2019, January 2020 and March 2020. The late charges for April and May, 2020, were waived due to Covid-19. Respondent charged \$15 per day for each day after the first of the month that rent was late in accordance with the lease provision on rent; the charge is for respondents' time to make additional trips to his post office box to check for rent. Dale Rocheleau set up a post office box to receive rent checks believing it was more secure. One of the co-signors struck out that language in the lease with respect to late fees and initialed the change, but respondent testified they did not agree to the change. There is no dispute that petitioner's rent was late on several occasions. Petitioner argued that late fees were not allowed under state law and they were never informed that late fees were accruing. Dale Rocheleau argued that the late fee is part of unpaid rent, and thus, allowed under state law. In addition, Hollie Waxman testified that respondent requested she use Venmo to pay the rent and she had difficulty using Venmo causing rent to be late on occasion. Petitioner's rent was always paid using Venmo. Dale Rocheleau testified that Venmo was merely an option for paying rent, not a requirement. The lease provides rental payments can be mailed or rent can be made via Venmo or PayPal.

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. 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.

10. City ordinance and state law allow a landlord to retain all or part of a security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant, for nonpayment of rent, for nonpayment of utilities and for expenses required to remove abandoned articles from the rental unit. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b). The only deduction taken from the deposit in this case is the \$285.00 deduction for

late fees. Petitioner argued that late fees were not allowed under state law while respondent argued they were allowed. Respondent also argued that late fees are part of unpaid rent. The Board concludes late fees are not one of the enumerated reasons for the withholding of a deposit under city ordinance or state law. In addition, the Board concludes late fees are not part of unpaid rent as argued by respondent. Therefore, a security deposit cannot be withheld for late fees. In addition, even if late fees were allowed to be withheld from a security deposit, the Board concludes there was no cost to the landlord when petitioner's rent was late in this case. Respondent argued that when petitioner's rent was late he had to make additional trips to the post office to see if there was a rent check from petitioner. However, petitioner was paying rent via Venmo so there was no reason for respondent to check the post office box. In addition, respondent set up the post office box to receive rent checks (and presumably other mail related to their rental units) as part of their way of doing business. Therefore, the cost of going back and forth to the post office was part of respondent's cost of doing business.

Order

Accordingly, it is hereby ORDERED:

11. Petitioner Ethan Waxman is entitled to recover from respondent HG Properties LLC the following amounts:

- a) \$285.00 of the principal amount of the security deposit improperly withheld after June 9, 2020; and
- b) Additional interest of \$0.002 per day from June 10, 2020 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 11th day of August, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Murphy
Patrick Murphy

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

BURLINGTON HOUSING BOARD OF REVIEW

Monday, July 20, 2020

7:00 p.m.

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

Webinar ID: 820 2526 4413

Password: 427010

Minutes

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

Staff present: Lisa Jones

1. Rachel Smith & Tanya Ocker (tenants); Bissonette Properties (landlord) (security deposit case) re: 52A North St
Present were: Rachel Smith, Tanya Ocker, Addy Bara; all parties were sworn in.
The Board took evidence and testimony from both parties. Hearing concluded.
2. Rebecca Shames, Meg Trogolo, Laurel Hebert, Kate Burba, Olivia Lopez, Nicole Irizamy (tenants); Martha Lang (landlord) (security deposit case) re: 140 Colchester Ave
Hearing posted at tenants' request.
3. Jacob Carr, Shailyn Wright, Morgan Siestlad (tenants); Greg Casto (landlord) (security deposit case) re: 72 Grant St
The hearing was rescheduled.
4. Ethan Waxman (tenant); Michelle Rocheleau (landlord) (security deposit case) re: 47 So. Williams St, Unit 203
Present were: Ethan Waxman, Hollie Waxman, Dale Rocheleau, Michelle Rocheleau; all parties were sworn in.
The Board took evidence and testimony from both parties. Hearing concluded.