



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

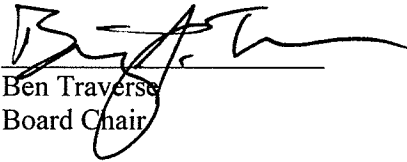
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 8/2/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Chris Khamnei
Patricia Wehman
Tim Ahonen

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 10-12 Intervale Avenue) HOUSING BOARD OF REVIEW**

The above-named hearing came before the Housing Board of Review on July 5, 2016. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Shawn Tao and Steven Goodkind were also present. Petitioner Chris Khamnei testified via telephone conference call. Tim Ahonen, Code Enforcement Officer, and Patricia Wehman, Code Enforcement Case Manager, were also present and testified.

FINDINGS OF FACT

- 1

4. Petitioner was aware back in December that he had until May 31 to paint. The Code Enforcement Office scheduled a reinspection of the property on June 10, 2016. On May 23, 2016, petitioner requested an extension to August 15, 2016 to have the exterior of the property painted. The Code Enforcement Office denied his request and he appealed that denial to this Board.

5. Petitioner has 3 properties (including the subject property) which were required under Minimum Housing orders to be painted by June 1, 2016. Work has been done on 2 of the properties, but no work has been done on the subject property. Petitioner has a crew of 6 painters and each property is taking 1 month to paint. Petitioner does not want to pull his crew from working on another property to work on the subject property because of the cost to reset the equipment and the disruption it would cause to his crew. He estimates that by the end of July or beginning of August his crew will move to the subject property. Consequently, he estimates painting can be finished by September 1, if not sooner.

6. Although it is the general practice of the Code Enforcement Office to grant a 30-day extension, Patrician Wehman believes an extension to September 1 is a long time, particularly since some paints chips found at the property tested positive for lead. Petitioner disputed the allegation of lead paint at the property and objected to Ms. Wehman's testimony because the test results were not available to him; in addition, he claims that the exterior paint is latex.

CONCLUSIONS OF LAW

7. Petitioner has requested that the Board extend the date by which he needs to comply with the Minimum Housing Order with respect to painting the exterior of the property. The Board views this request as a request for a variance from the code standard related to the date by which the property must be painted. To grant a variance from the strict application of the Code, the Board must determine that:

by reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued....

Minimum Housing Code, Sec. 18-120(c). Once this standard is met, the Board's discretion to grant a variance is further circumscribed by another provision of Section 18-42(c):

[P]rovided, however, that the Board shall have the power to vary from the strict application of the requirements of this chapter only to the least extent necessary to relieve the difficulties or hardships involved, and only if such variance will not cause substantial detriment to the health, safety, morals and general welfare of the persons residing in the dwelling units involved or to the general public and will not cause substantial impairment of the intent and purpose of this chapter....

8. The Board concludes that petitioner has not met the standards required in order for the Board to grant a variance. Petitioner has known for almost 6 months that the property needed to be painted by June 1, 2016. His request is based in part on the disruption and cost to move his crew from one property to another one. However, he offered no testimony as to why he did not hire separate crews for each property, knowing that they all needed to be painted by June 1. Additionally, the ordinance presumes that paint on all dwellings constructed prior to January 1, 1978 is lead-based unless the paint was found not to be lead-based by a state-certified lead testing inspector who has issued a report to the owner of their findings. Minimum Housing Code Sec. 19-112(b). Petitioner provided no information to rebut this presumption. Therefore, the Board concludes that granting a variance to September 1 may be detrimental to the health and safety of the general public.

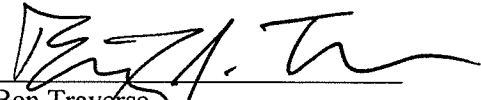
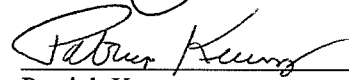
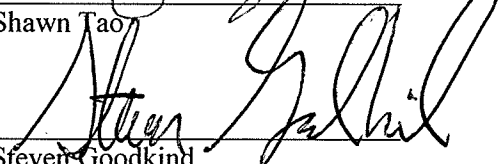
ORDER

Accordingly, it is hereby ORDERED:

9. The request of petitioner for an extension to September 1, 2016 to paint the exterior of the building is DENIED.

DATED at Burlington, Vermont this 2nd day of August, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Shawn Tao
Steven Goodkind



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NOTICE OF DECISION

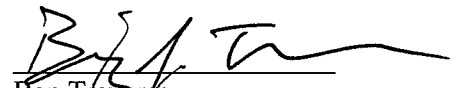
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DATED 8/2/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverre
Board Chair

cc: Laura Hinsdale
Bob Meijers

**In re: Request for Hearing of LAURA)
HINSDALE Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by BOB MEIJERS) HOUSING BOARD OF REVIEW
for Rental Unit at 119 Buell Street)**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Respondent Bob Meijers is the owner of a rental unit, 119 Buell Street, in the City of Burlington which is the subject of these proceedings.

2. Petitioner Laura Hinsdale and her roommates - Nora King, Samantha Hulbert, Brielle Short, Brina Pochal, Emily Wheaton, Hunter DiGangi and Francesca Huey - moved into the rental unit with a written lease which ran from June 10, 2015 to May 31, 2016. Monthly rent was \$6,008.00.

3. Petitioner and her roommates paid a security deposit of \$6,008.00 to respondent; each tenant paid \$751.00 toward the total deposit. Petitioner and her roommates were to receive back their security deposit at the end of the lease minus any amounts withheld for damages. Upon challenge by respondent, petitioner indicated she was authorized by her former roommates to represent their interests in this matter, and to receive any money ordered by the Board to be returned to the tenants. Gaye Godfrey (Nora King's mother) confirmed this authorization. The Board credits petitioner's representations.

4. Petitioner and her roommates vacated the apartment on May 31, 2016.

5. On June 14, 2016, respondent sent a statement, by certified mail, to each tenant informing them that part of the deposit was being withheld for damages. The statement itemized damages totaling \$2,190.21. Respondent returned \$535.27 to each tenant with the exception of Brina Pochal who received nothing. Interest was not credited to the security deposit. In addition, the written statement did not inform the tenants of the opportunity to request a hearing before this Board.¹

CONCLUSIONS OF LAW

6. 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.

7. The State of Vermont's Landlord and Tenant Act, 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.

8. 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 certified 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).

¹ When the Board inquired into the absence of notice to the tenants of their right to a hearing, the telephone connection with respondent disconnected. The Board attempted to reconnect with respondent but the call went to his voicemail. Respondent did not make any attempt to call back and has not subsequently contacted the Board to ask about the circumstances surrounding the disconnection. Accordingly, the Board presumed that respondent purposefully disconnected and refused to pick up the return call, and the hearing proceeded in his absence.

9. 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 mail.² 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. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

10. Petitioner is 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:

11. Petitioner Laura Hinsdale is entitled to recover from respondent Bob Meijers the following amounts:

a) \$2,261.11 of the principal amount of the security deposit improperly withheld after June 14, 2016;

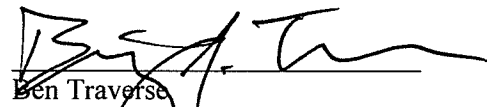
b) Interest in the amount of \$15.02 on the entire deposit for the period June 10, 2016 to June 14, 2016; and

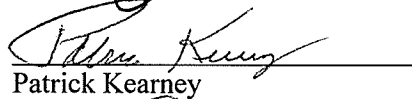
² An amendment to Sec. 18-120(c) removed a "certified mail" requirement effective January 7, 2015.

c) Additional interest of \$0.01 per day from June 15, 2016 until such date as the amount improperly withheld is returned to petitioner.

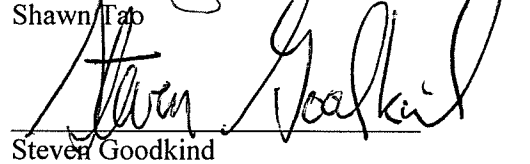
DATED at Burlington, Vermont this 2nd day of August, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Shawn Lap


Steven Goodkind