# BURLINGTON HOUSING BOARD OF REVIEW

**Monday, June 17, 2019**

**7:00 p.m.**

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

**AGENDA***

1. Chris Khamnei (property owner) (code case) re: 395 College St Unit 1

2. Caitlin Halpert (tenant); David and Maureen Marble, Trustees of the Marble Living Trust, (landlord) (security deposit case) re: 11 Clymer St, Apt. 1 (postponed from meeting of 6/3/19)

*Revised 6/5/19

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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 7/16/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Caitlin Halpert
David & Maureen Marble

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

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| **In re: Request for Hearing of CAITLIN HALPERT Regarding Withholding of Security Deposit by DAVID and MAUREEN MARBLE, Trustees of the MARBLE LIVING TRUST, for Rental Unit at 11 Clymer St, Apt. 1** | ) ) ) ) ) | **CITY OF BURLINGTON HOUSING BOARD OF REVIEW** |

## FINDS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 17, 2019. Board Chair Ben Traverse presided. Board members Josh O'Hara, Patrick Kearney and Steve Goodkind were also present. Petitioner Caitlin Halpert was present and testified. Brian Sewell and Tom DeMoya were also present and testified on behalf of the Petitioner. Kate Kinney, Property Manager for Appletree Bay Property Management, testified as a representative of Respondents David and Maureen Marble, Trustees of the Marble Living Trust, landlord of the subject apartment, apartment # 1 at 11 Clymer Street.

## FINDINGS OF FACT

1. David and Maureen Marble, Trustees of the Marble Living Trust, are the owners of 11 Clymer Street – Unit 1 which was rented as a rental unit under a lease contract which is the subject property of this proceeding.

2. Kate Kinney was the individual employed by Appletree Bay Management who provides property management services and oversaw the management of the subject property of this.

3. Petitioner Caitlin Halpert was the tenant in the rental unit with annual leases which ran from April 2013 to April 2019; the last of which ran from 4/283/2018 to 4/27/2019. The deposit carried over from year to year.

4. Petitioner paid a security deposit of $1100.00. Rent for the 12 month lease was $1150.00 per month. Under the terms of the lease, petitioner was to receive back the security deposit at the end of the lease minus any amounts withheld for damages.

5. Petitioner moved out of the rental unit on April 23, 2019.

6. Respondent sent petitioner a notice of withholding within the 14 day period required by law which indicated that there was an accounting for $313.00 of withholding for damage and a balance for $787.00 of the security deposit as a balance due to petitioner. There was no check included with the notice of withholding statement. The notice was mailed on May 3, 2019 and received on May 5, 2019.

7. Petitioner received a second letter with a postmark of May 13, 2019 which was received on May 15, 2019; 20 and 22 days after the uncontested date of the petitioner's move out. That second letter contained a check for $787.00.

8. Representative for the respondent, Ms. Kinney, testified that the first letter was sent in order to comply with the 14 day legal requirement, but that as property manager she was not authorized to make out a check and that the Marbles were responsible for doing that and she could not offer an explanation for the delay in issuing the check.

9. There was no reimbursement for accrued interest made.

10. There was testimony by both parties made as to damages or the lack thereof as might of occurred as to the apartment but, by virtue of the Board's determination that the 14 day rule was not satisfied, that testimony provided no additional relevant information vis-a-vis findings of fact.

## 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. 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 mailing 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 withhold any portion of the security deposit."

14. Based on the evidence presented, the Board finds that respondent was not entitled to withhold the full amount of the security deposit **or any portion thereof** because the respondent failed to return timely the security deposit funds which were not subject to deduction.

**ORDER**

Accordingly, it is hereby ORDERED:

15. Petitioner Caitlin Halpert is entitled to the return of $313.00 of the security deposit plus any and all statutory interest accrued by that deposit over the 6 years of leasing plus additional per diem since April 23, 2019.

DATED at Burlington, Vermont this 16th day of July, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse*

Josh O'Hara

Patrick Kearney

Steven Goodkind*

*Ben Traverse's and Steven Goodkind's term ended on June 30, 2019