



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

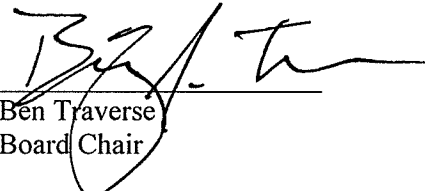
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 7/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Andrea Juneau & Andrew Ewanchyna
Kim & Martin Bombard

**In re: Request for Hearing of ANDREA)
JUNEAU and ANDREW EWANCHYNA)
Regarding Withholding of Security) CITY OF BURLINGTON
Deposit by KIM and MARTIN BOMBARD) HOUSING BOARD OF REVIEW
for Rental Unit at 200 Howard St Unit A)**

The above-named hearing came before the Housing Board of Review on June 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioners Andrea Juneau and Andrew Ewanchyna were present and testified. Respondents Kim and Martin Bombard was also present and testified.

FINDINGS OF FACT

- 1

4. The lease, although inconsistent, supports petitioners' argument that the \$1,000.00 was a partial payment toward the deposit. Page 1 of the lease states the tenant has deposited \$1,000.00 as a security deposit. However, Sec. 8 of the lease, "Security Deposit", states the owner has collected a deposit from the tenant equal to the initial month's rent and indicates the owner collected \$1,000.00 to be applied toward tenant's security deposit. There is no dispute that \$1,000.00 was paid toward the deposit on June 1, 2015 with the rent check. As there is no other written document related to the \$1,000.00 check given to respondents on March 12, 2015, the Board finds the total amount of the security deposit was \$2,000.00.

5. Petitioners vacated the apartment on April 30, 2017.

6. On May 15, 2017, respondents sent petitioners a check in the amount of \$1,000.00 with a notation that the deposit was returned in full. The parties had already corresponded via text messages about the amount of the deposit prior to petitioners returning \$1,000.00. Although respondents believed the deposit amount was only \$1,000.00, Kim Bombard returned another \$1,000.00 by money order in order "to keep the peace."

7. Respondents did not inform petitioners of their right to appeal to this Board. In addition, interest was not credited to the deposit.

8. Petitioners argued that the deposit was willfully withheld and requested that double the amount withheld be returned to them. Petitioners argued that during their tenancy they paid water for a tenant living in the basement which demonstrated respondents' intent to deceive them.¹ Respondents countered they did not willfully withhold any money: they believed the deposit amount was \$1,000.00 and that's the amount they returned. Then, in order to keep peace between themselves and petitioners, Kim Bombard returned an additional \$1,000.00.

¹ The matter of water charges during the tenancy is not before this Board, and we make no findings or rulings with respect to it.

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). Petitioners vacated the unit on April 30, 2017 and respondents sent a check to them on May 15, 2017 – 1 day late.

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.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

² An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

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, respondents failed to comply with the notice requirements by failing to return the deposit within 14 days and by failing to include petitioners' appeal rights in the statement. Therefore, had respondents not returned the entire deposit, they would have forfeited it.

13. Both city ordinance and state law provide that 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). Petitioners argued that respondents' failure to return the deposit was willful. Petitioners argued that water charges they paid over the course of the tenancy show respondents' intent to deceive them, both with respect to the water and the deposit. Respondents returned what they believed was the entire amount of the security deposit. The text messages between the parties indicate a real dispute between them over the amount of the deposit, not an intent to deceive petitioners or to willfully withhold the deposit. The Board concludes the withholding of \$1,000.00 of the deposit was not willful.

14. 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.

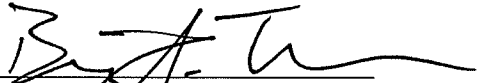
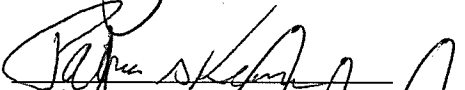
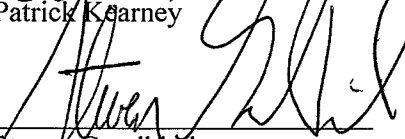
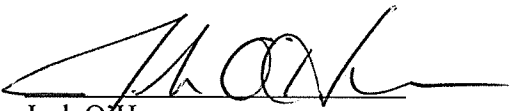
ORDER

Accordingly, it is hereby ORDERED:

15. Petitioners Andrea Juneau and Andrew Ewanchyna are entitled to recover from respondents Kim and Martin Bombard interest in the amount of \$10.02 on the principal amount of the deposit.

Dated at Burlington, Vermont this 18th of July, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Steven Goodkind
Alec Bauer
Josh O'Hara



HOUSING BOARD OF REVIEW

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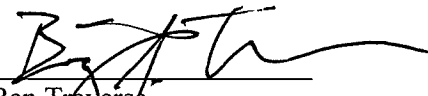
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 7/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Jasmine Walker
Maria & Fritz Senftleber

10. *Chlorophyll *a** and *Chlorophyll *b** were determined by the method of Arar and Cook (1987).

In re: Request for Hearing of JASMINE)
WALKER Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by MARIA and FRITZ) HOUSING BOARD OF REVIEW
SENFTLEBER for Rental Unit at 132)
Hayward Street)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Jasmine Walker was present and testified. Respondents Maria and Fritz Senfteleber were also present and testified. Also appearing and testifying was Hollis Easter.

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 Maria and Fritz Senftleber are the owners of a rental unit, 132 Hayward Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Jasmine Walker moved into the rental unit on November or about November 1, 2007. Hollis Easter moved into the unit in August, 2015. Petitioner and Hollis Easter then signed a lease agreement with respondents for the period April 1, 2016 to March 31, 2017. Monthly rent was \$2,100.00.
3. Petitioner paid a security deposit of \$1750.00 to respondents. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner and Hollis Easter vacated the apartment on March 30, 2017.
5. On April 15, 2017, respondents returned \$1,088.70 of the deposit to petitioner with a post-it note itemizing deductions from the deposit. The note does not inform petitioner of her right to request a hearing to dispute the withholding of part of the deposit. In addition, interest was not credited to the deposit.

6. Petitioner argued that the withholding of part of the deposit was willful; she requested that respondents be ordered to return double the amount wrongfully withheld. The basis of petitioner's request was her belief that the deductions were inflated and did not reflect the actual cost to repair the alleged damages. Petitioner did not provide any written estimates or witnesses to support her argument that respondents' estimates were inflated. Petitioner also testified that respondents had a history of failing to comply with Minimum Housing standards, which she believed was evidence of willfulness.

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).

10. 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, respondents failed to comply with the notice requirements by failing to return the deposit with an itemized statement within 14 days of the vacate date and by failing to include petitioner's appeal rights in the statement. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

11. Both city ordinance and state law provide that 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). Petitioner argued that respondents' failure to return the deposit was willful; the basis for her claim was her belief that the deductions were inflated and not supported by facts. In addition, petitioner argued that respondents have a history of not complying with Burlington's rental registration program, thus evidencing their ill will. Petitioner's arguments are rooted in her belief that respondents were not being truthful about the cost of repairs; however, she provided no written estimates to support that belief. Although the Board does not need to reach a decision on the reasonableness of the deductions, on their face, they do not seem exorbitant. The Board concludes the deposit was not willfully withheld.

12. 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.

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

ORDER

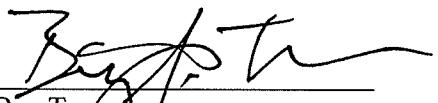
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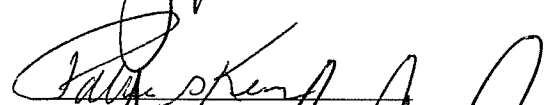
13. Petitioner Jasmine Walker is entitled to recover from respondents Maria and Fritz Senftleber the following amounts:

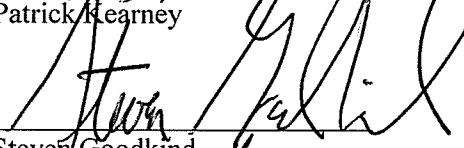
- a) \$661.30 of the principal amount of the deposit improperly withheld after April 14, 2017;
- b) Interest in the amount of \$41.31 on the entire deposit for the period November 1, 2007 to April 14, 2017; and
- c) Additional interest of \$0.004 per day from April 15, 2017 until such date as the amount improperly withheld is returned to petitioners.

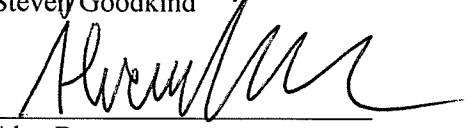
Dated at Burlington, Vermont this 18th of July, 2017.

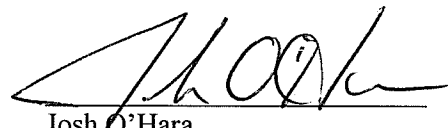
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


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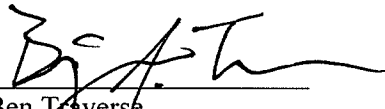
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DATED

7/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Sharmion Selman
Janet Dion for Burlington Housing Authority

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

**In re: Request for Hearing of SHARMION)
SELMAN Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by BURLINGTON) HOUSING BOARD OF REVIEW
HOUSING AUTHORITY for Rental Unit)
At 243 Church Street, #8)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 5, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Sharmion Selman was present and testified. Respondent Burlington Housing Authority was represented at the hearing by Janet Dion. Also appearing and testifying as witnesses were Sceronne Selman and Suelan Kasongo.

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 Burlington Housing Authority ("BHA") is the owner of a rental unit, 243 Church Street, #8, in the City of Burlington which is the subject of these proceedings. Janet Dion is the Director of Property Management for BHA.

2. Petitioner Sharmion Selman moved into the rental unit on or about March 1, 2007. Petitioner paid a security deposit of \$223.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

3. Petitioner vacated the apartment on April 30, 2017.

4. On May 11, 2017, respondent sent a written statement to petitioner's forwarding address in conformance with ordinance requirements. Said statement itemized deductions totaling \$635.00. Interest in the amount of \$10.78 was credited to the deposit.

5. Both parties testified with respect to the replacement of the living room carpet which appeared as a \$460.00 deduction on the itemized statement. Respondent replaced the living room carpet due to stains on it. The carpet was new when petitioner moved into the apartment approximately 10 years ago. Petitioner acknowledged there was one spot in front of her couch that was stained; she tried to clean it, but the stain would not come up. Petitioner disputed that the entire carpet was stained.

6. Both parties testified with regard to painting a wall behind the stove which appeared as a \$40.00 deduction on the itemized statement. The wall behind the stove had built up grease on it; the wall was cleaned and then painted. When petitioner cleaned behind the stove, the paint came off the wall so she stopped cleaning it. Janet Dion indicated that BHA has no set policy on how often a unit is painted; units are painted as needed.

7. Other deductions from the deposit were not disputed.

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). Proper notice was provided.

11. Based on the evidence, the Board concludes that the deductions for the living room carpet and cleaning/painting the wall behind the stove were not reasonable. Petitioner lived in the apartment for approximately 10 years. There was no evidence that petitioner did not take care of the apartment while she lived there. Painting in the apartment and the need for a new carpet after 10 years of occupancy is part of normal wear and tear.

ORDER

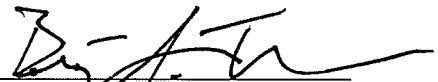
Accordingly, it is hereby ORDERED:

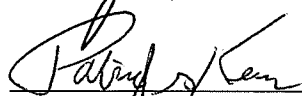
12. Petitioner Sharmion Selman is entitled to recover from respondent Burlington Housing Authority the following amounts:

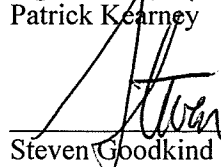
- a) \$98.78 of the principal amount of the security deposit improperly withheld after May 14, 2017; and
- b) Additional interest of \$0.001 per day from May 15, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 18th of July, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

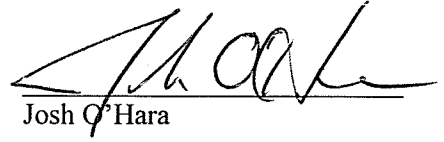

Ben Traverse


Patrick Kearney


Steven Goodkind

A handwritten signature in black ink, appearing to read 'Alec Bauer', written over a horizontal line.

Alec Bauer

A handwritten signature in black ink, appearing to read 'Josh O'Hara', written over a horizontal line.

Josh O'Hara