

BURLINGTON HOUSING BOARD OF REVIEW

Monday, May 18, 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/86119511618?pwd=d1QxTUF2TjF5RVlDOUthFZ3loZ1R3dz09>

OR

Call in for audio only:

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 **or** +1 (253) 215-8782

Webinar ID: 861 1951 1618

Password: 744808

International numbers available: <https://us02web.zoom.us/j/keDDE3nqUP>

AGENDA

1. Aneesa Adhab (tenant); Burlington Housing Authority (landlord) (security deposit case) re: 82 Hillside Terrace (rehearing)
2. Charlotte Rutz (tenant); Jeff Templeton (landlord) (security deposit case) re: 1910 North Avenue
3. Steve Cormier & Jenny Rossi (tenants); Janet Handy & Earl Handy (landlords) re: 204 So. Champlain Street

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 6/2/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Charlotte Rutz
Jeff Templeton

HOUSING BOARD OF REVIEW

**In re: Request for Hearing of CHARLOTTE RUTZ)
Regarding Withholding of Security Deposit by JEFF) Security Deposit Appeal
TEMPLETON for Rental Unit at 1910 North Avenue)**

DECISION AND ORDER

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 Jeff Templeton is the owner of a rental unit, 1910 North Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Charlotte Rutz moved into the rental unit on September 30, 2019. She had a written lease which ran from October 28, 2019 to November 1, 2020. Monthly rent was \$1,000.00.
3. Petitioner paid a security deposit of \$1,000.00 to respondent. Petitioner was to receive back her security deposit upon vacating the unit minus any amounts withheld for damages.
4. Petitioner vacated the apartment on February 29, 2020. At the end of January, 2020, petitioner provided her notice to vacate to respondent.

5. Respondent did not return any of the deposit to petitioner and did not send her a statement itemizing deductions from the deposit. In an email dated March 6, 2020, respondent indicated his wife was getting together quotes for cleaning and repairs in the apartment and would have estimates in a few days. In response, on March 7 by email, Tom Rutz requested a list of the assessed damages. Respondent did not provide a list of assessed damages to either Mr. Rutz or petitioner as he indicated he would.

6. On March 15, 2020, Tom Rutz emailed respondent and informed him that since he did not provide a list of itemized deductions within the time period required by law, he was required to return it. On March 18, 2020, respondent replied by email that he had no intention of returning the deposit due to the condition of the apartment.

7. None of respondent's emails informed petitioner of her right to dispute the withholding of her deposit before this Board.

8. Petitioner disputed the withholding of the deposit and argued that the deposit was willfully withheld. Tom Rutz argued that respondent's failure to respond to his and petitioner's requests for information about the deposit, including providing an itemized list of the claimed damages to them, demonstrated his willfulness. In addition, when Mr. Rutz emailed respondent on March 15 and informed him of the 14-day notice requirement, respondent replied, "I have no intentions on returning Charlotte's security 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

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

with all of the notice requirements. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. Petitioner has also moved for double damages, alleging that respondent's failure to return her security 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). Although as a landlord, respondent should be aware of his obligation to return the deposit with an itemized statement of deductions within 14 days of the tenant's vacate date, even when Tom Rutz informed him of that responsibility, he responded that he had no intention of returning it. When notified of this Board's hearing, he chose not to participate. Therefore, based on the evidence and testimony before us, the Board concludes respondent's unlawful withholding of the deposit was willful.

14. Petitioner is entitled to recover interest on the 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 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. Petitioner Charlotte Rutz is entitled to recover from respondent Jeff Templeton the following amounts:

- a) \$1,000.00 of the principal amount of the security deposit improperly withheld after March 14, 2020;
- b) \$1,000.00, double the amount of the security deposit willfully withheld;
- c) Interest in the amount of \$1.16 on the entire deposit for the period October 1, 2019 to March 14, 2020; and
- d) Additional interest of \$0.007 per day from March 15, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 2nd day of June, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Kearney
Patrick Kearney

/s/ Olivia Pena
Olivia Pena

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk



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NOTICE OF DECISION

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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 6/2/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

Board Chair

cc: Steve Cormier & Jenny Rossi
Earl Handy

CITY OF BURLINGTON, VERMONT

HOUSING BOARD OF REVIEW

**In re: Request for Hearing of STEVE CORMIER)
And JENNY ROSSI Regarding Withholding of) Security Deposit Appeal
Security Deposit by JANET HANDY and EARL)
HANDY for Rental Unit at 204 So. Champlain St.)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 18, 2020.

The meeting was conducted electronically via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Steve Cormier and Jenny Rossi were present and testified. Respondent Earl Handy was present and testified. Respondent Janet Handy was represented at the hearing by Mary Small.

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 Earl Handy and Janet Handy are the owners of a rental unit, 204 So. Champlain Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Steve Cormier and Jenny Rossi moved into the rental unit on August 1, 2012 under the terms of a written lease. The most recent lease ran from August 1, 2019 to July 24, 2020. Monthly rent is \$850.00.
3. Petitioners paid a security deposit of \$750.00 to respondent. Petitioners are to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. In November, 2019, petitioners asked respondents about ending the lease early if they bought a condominium; petitioners indicated they were thinking of looking for one to buy. Respondents indicated the lease ended in July, 2020, and they were responsible for rent until the end of the lease. Respondents also informed petitioners that they were not willing to allow petitioners to sublet the apartment.

5. On March 25, 2020, petitioners sent respondents notice of vacating the apartment. Petitioners informed respondents they would be out of the apartment on or before June 1, 2020. Petitioners testified they moved out, cleaned the apartment and left the keys on the counter on March 27, 2020. The parties sent correspondence back and forth to one another in April and May about each other's responsibilities related to re-renting the apartment and paying rent to the end of the lease. None of petitioners' letters stated they were completely out of the apartment or that they had left the keys to the apartment on the counter. Respondents testified they were unaware that petitioners had completely moved out of the apartment; respondents believed petitioners had the keys to the apartment and were still in possession of it. Petitioners paid rent for the months of April and May.

6. On May 1, 2020, petitioners filed a Request for Hearing before this Board seeking the return of their security deposit even though a letter sent to respondents on April 16 indicated they had surrendered the deposit to respondents. However, a subsequent letter sent on April 27 demanded the return of their deposit. Respondents argued that they had no reason to believe June 1 was not the vacate date since May rent was paid and petitioners did not return the keys to them.

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.

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.

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 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).

9. On March 25, 2020, petitioners provided their notice to vacate the apartment to respondents. That notice indicated they would be out of the apartment on or before June 1, 2020. Rent was paid for the months of April and May. Petitioners did not indicate in any of their subsequent letters to respondents that they were completely out of the apartment. In addition, they did not return the keys to respondents or indicate where the keys were. Given that rent was

paid for May and petitioners' notice to vacate indicated June 1 as the vacate date, the Board concludes petitioners have possession of the apartment until that date (June 1). Consequently, their request for relief is premature.

Order

Accordingly, it is hereby ORDERED:

10. Petitioners Steve Corner and Jenny Rossi's request is DISMISSED.

DATED at Burlington, Vermont this 2nd day of June, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Kearney
Patrick Kearney

/s/ Olivia Pena
Olivia Pena

/s/ Patrick Murphy
Patrick Murphy

/s/ Betsy McGavisk
Betsy McGavisk

HOUSING BOARD OF REVIEW

DECISION AND ORDER

3. Petitioner paid a security deposit of \$772.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioner vacated the apartment on December 19, 2019.

5. On January 2, 2020, respondent sent petitioner a written statement itemizing deductions from the deposit in accordance with ordinance requirements. The statement itemized damages totaling \$2,689.51. None of the deposit was returned. Petitioner disputed the deductions.

6. Interest in the amount of \$19.93 was credited to the deposit.

7. Appearing on the statement of deductions was a balance forward on petitioner's rental account of \$1,165.94 for unpaid utilities.

8. Respondent deducted \$1507.50 from the deposit for making repairs and for cleaning the unit. Respondent's maintenance department charges \$55/hour to make repairs and to clean. The statement noted that the kitchen floors, kitchen cabinets, the stove, and living room and bedroom floors were dirty and needed cleaning. Photos submitted by respondent indicate there was a lot of cleaning that needed to be done in the kitchen. Based on respondent's move-out inspection form, it appears that approximately 11 hours were spent on cleaning. When questioned about the hourly rate for cleaning (which one Board member characterized as outrageous), Janet Dion just stated that BHA's maintenance department charges \$55/hour for both cleaning and repairs. Petitioner disputed the deduction and testified she had 2-3 people helping her clean the unit before she moved out of it. Petitioner also testified she always kept the house clean so could not understand the charge for cleaning.

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). Proper notice was provided.

12. 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. A tenant may object to the withholding and request a hearing before this Board for a review of the

reasonableness of the owner's deductions; the Board is tasked with making findings and conclusions regarding the reasonableness of the deductions. Sec. 18-120(e). In this case, respondent deducted a charge of \$55/hour for cleaning – the same rate of charge for making repairs which arguably requires more skill. Janet Dion did not explain the rate of charge, but merely indicated that was what the maintenance department charged. While the Board finds a deduction for cleaning to be reasonable, as the cleaning was beyond what was attributable to normal wear and tear, we find the rate of charge for cleaning to be unreasonable. In the Board's experience, the rate of charge for cleaning has been no more than \$35/hour. The Board concludes a reasonable rate for cleaning was \$35/hour.

13. Based on the evidence and testimony, the Board further concludes that the deduction for unpaid utilities was reasonable.

14. As the deductions for unpaid utilities and cleaning exceed the amount of the security deposit, the Board concludes the withholding of the entire security deposit was proper.

Order

Accordingly, it is hereby ORDERED:

15. Petitioner Aneesa Adhab's request for relief is DENIED.

DATED at Burlington, Vermont this 30th day of June, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Patrick Kearney
Patrick Kearney

/s/ Olivia Pena
Olivia Pena

/s/ Betsy McGavisk
Betsy McGavisk

BURLINGTON HOUSING BOARD OF REVIEW

Monday, May 18, 2020 at 7:00 p.m.

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

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

Staff present: Lisa Jones

1. Aneesa Adhab (tenant); Burlington Housing Authority (landlord) (security deposit case) re: 82 Hillside Terrace (rehearing)
Present were: Aneesa Adhab, Janet Dion, Mona Tolba (interpreter); parties were sworn in.
Board took evidence and testimony from all parties. Technical problems occurred. Board continued hearing to June 1, 2020.
2. Charlotte Rutz (tenant); Jeff Templeton (landlord) (security deposit case) re: 1910 North Avenue
Present were: Charlotte Rutz, Tom Rutz; parties were sworn in.
Board took evidence and testimony from all parties. Hearing concluded.
3. Steve Cormier & Jenny Rossi (tenants); Janet Handy & Earl Handy (landlords) re: 204 So. Champlain Street
Present were: Steve Cormier, Jenny Rossi, Earl Handy, Mary Small; all parties were sworn in.
Board took evidence and testimony from all parties. Hearing concluded.