

BURLINGTON HOUSING BOARD OF REVIEW

Monday, May 4, 2020

7:00 p.m.

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

https://zoom.us/webinar/register/WN_Fy6qmjqnSRiL4Ace03o9zw

OR

Call in for audio only: (312) 626-6799

Webinar ID: 933 9453 0870

AGENDA

1. Alyssa Grant & Jordan Atwood (tenants); Handy Court LLC/Rick Handy (landlord) (security deposit case) re: 9 Handy Court (rescheduled from 3/16/20 meeting)
2. Tonya Bailey (tenant); Marijos Properties (landlord) (security deposit case) re: 56 Monroe St, #3 (rescheduled from 3/16/20 meeting)
3. Hasta Magar (tenant); O.N.E. Housing LP/Champlain Housing Trust (landlord) (security deposit case) re: 312 Manhattan Dr

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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 5/22/2020

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Alyssa Grant & Jordan Atwood
Rick Handy for Handy Court LLC
Champlain Valley Office of Economic Opportunity ("CVOEO")

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

**In re: Request for Hearing of ALYSSA GRANT)
and JORDAN ATWOOD Regarding)
Withholding of Security Deposit by) Security Deposit Appeal
HANDY COURT LLC for Rental Unit at)
9 Handy Court)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 4, 2020; the meeting was held electronically via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Alyssa Grant and Jordan Atwood were present and testified. Respondent Handy Court LLC was represented at the hearing by Rick Handy 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 Handy Court LLC is the owner of a rental unit, 9 Handy Court, in the City of Burlington which is the subject of these proceedings. Rick Handy manages the property.
2. Petitioners Alyssa Grant and Jordan Atwood moved into the rental unit on June 1, 2019.
3. Respondent received a security deposit of \$1900.00. Rick Handy testified that Champlain Valley Office of Economic Opportunity (CVOEO) paid the deposit. Petitioners disputed the amount of the deposit paid to respondent and who paid it.

Petitioners testified the total amount of the deposit was \$2100.00; in addition, they testified that they paid half of the deposit and CVOEO paid half of it. The Board finds respondent's testimony regarding the amount of the deposit and who paid it to be more credible.

4. Petitioners vacated the apartment on February 1, 2020.

5. On February 12, 2020, Rick Handy sent a text message to petitioner Alyssa Grant with an itemized list of deductions from the deposit. Mr. Handy withheld the entire deposit for damages and unpaid rent. Mr. Handy also mailed the statement to petitioners through a family member. Petitioners denied having received an itemized statement of deductions.

6. Respondent's statement of deductions did not include notice to petitioners of their opportunity to request a hearing before this Board to dispute the withholding of the deposit. In addition, interest was not credited to the deposit.

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, 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.

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

11. 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. Minimum Housing Code Sec. 18-120(c). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest. In this case, interest was not credited to the deposit. Accordingly, the Board will order that interest be returned.

Order

Accordingly, it is hereby ORDERED:

12. Respondent Handy Court LLC shall return to CVOEO (the entity that paid the security deposit) the following amounts:

- a) \$1900.00 of the principal amount of the security deposit improperly withheld after February 15, 2020;
- b) Interest in the amount of \$2.60 on the entire deposit for the period June 1, 2019 to February 15, 2020; and
- c) Additional interest of \$0.01 per day from February 16, 2020 until such date as the amount improperly withheld is returned.

DATED at Burlington, Vermont this 22 day of May, 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 5/22/2020

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

Board Chair

cc: Tonya Bailey
Mary Albarelli for Marijo's Properties
Champlain Valley Office of Economic Opportunity ("CVOEO")

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

**In re: Request for Hearing of TONYA BAILEY)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by MARIJO'S PROPERTIES)
for Rental Unit at 56 Monroe St, #3)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on May 4, 2020; the meeting was held electronically via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Tonya Bailey was present and testified. Respondent Marijo's Properties was represented at the hearing by Mary Albarelli 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 Marijo's Properties is the owner of a rental unit, 56 Monroe St, #3, in the City of Burlington which is the subject of these proceedings. Mary Albarelli manages the property.
2. Petitioner Tonya Bailey moved into the rental unit with a written lease which commenced on December 1, 2017 with an initial term of 1 year. Monthly rent was \$1350.00.
3. Champlain Valley Office of Economic Opportunity ("CVOEO") paid a security deposit of \$1350.00 to respondent in January, 2018. When CVOEO paid the deposit they instructed respondent to return the deposit (minus any allowable deductions) to them at the end of the tenancy. Petitioner testified that a different entity paid the

deposit. However, documentary evidence submitted to the Board indicates the deposit was paid by CVOEO and any return of security deposit monies should go to them.

4. Petitioner vacated the apartment on February 3, 2020.

5. On February 13, 2020, Mary Albarelli sent a letter and itemized list of deductions to CVOEO; she also sent a copy of the letter to petitioner at the address of the rental unit because she did not have a forwarding address for petitioner. Said statement itemized deductions totaling \$1125.00. Ms. Albarelli returned \$252.14 of the deposit to CVOEO. Petitioner disputed the deductions.

6. Interest in the amount of \$27.14 was credited to the deposit.

7. Respondent deducted \$720.00 for cleaning. Mary Albarelli hired Carrie Abair to help her clean the unit. Ms. Albarelli testified that she and Ms. Abair each spent more than 24 hours cleaning the apartment; the rate charged for cleaning was \$15/hour. Carrie Abair sent an invoice for \$360.00 to respondent for cleaning services. Ms. Albarelli testified that the unit was a mess and very dirty: the walls were covered with stickers and contact paper. In the kitchen, Ms. Albarelli testified that the counter tops were stained and the cupboards needed to be emptied and scrubbed cleaned. Ms. Albarelli also had to scrub stains out of the carpet and floors. Petitioner disputed the charge as being excessive. Petitioner also argued that some of the cleaning was part of normal wear and tear. The few photos of the unit submitted by petitioner indicate there was some cleaning done by her. Photos submitted by respondent indicate there was cleaning that needed to be done throughout the apartment.

8. Respondent deducted \$162.00 for cleaning supplies, missing hardware and knobs, and shades that needed to be replaced.

9. Respondent deducted \$45.00 for patching walls. There was torn sheetrock on some walls that needed to be repaired; in addition, there were stickers on the walls that needed to be removed. Dan Valyou did the repair work; he charged \$35/hour to do the work.

10. Respondent deducted \$150.00 to dispose of items left by petitioner, both inside and outside of the unit. There was a lot of garbage and bags of items left outside the apartment that needed to be hauled away. In addition, there were some items left inside the unit that needed to be removed and disposed.

11. Respondent deducted \$48.00 for unpaid rent – that being 3 days of rent in February, 2020.

Conclusions of Law

12. 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.

13. 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.

14. 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.

15. Based on the evidence, the Board concludes the deductions for patching walls (\$45), removing and disposing of items left by petitioner (\$150) and unpaid (\$48) were proper.

16. 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.

17. Petitioner disputed the cleaning charge as being excessive; in addition, petitioner argued that cleaning was part of normal wear and tear. While there is a certain amount of cleaning that may be attributable to normal wear and tear, having to clean stickers off walls, scrubbing floors and carpets to remove stains, and scrubbing cupboards is beyond normal wear and tear. The Board concludes that a reasonable charge for cleaning beyond what was attributable to normal wear and tear is \$360.00. With respect to the \$162.00 charge for supplies and replacement parts, the Board concludes the charge was part of normal wear and tear.

Order

Accordingly, it is hereby ORDERED:

18. Respondent Marijo's Properties must return to CVOEO the following amounts:

a) \$522.00 of the principal amount of the deposit improperly withheld after February 17, 2020; and

b) Additional interest of \$0.003 per day from February 18, 2020 until such date as the amount improperly withheld is returned to CVOEO.

DATED at Burlington, Vermont this 22 day of May, 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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Minutes

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

Staff present: Lisa Jones

1. Alyssa Grant & Jordan Atwood (tenants); Handy Court LLC/Rick Handy (landlord) (security deposit case) re: 9 Handy Court (rescheduled from 3/16/20 meeting)
Present were: Alysa Grant, Jordan Atwood, Rick Handy; all parties were sworn in.
The Board took evidence and testimony from both parties. Hearing was concluded.
2. Tonya Bailey (tenant); Marijos Properties (landlord) (security deposit case) re: 56 Monroe St, #3 (rescheduled from 3/16/20 meeting)
Present were: Tonya Bailey, Mary Albarelli; all parties were sworn in.
The Board took evidence and testimony from both parties. Hearing was concluded.
3. Hasta Magar (tenant); O.N.E. Housing LP/Champlain Housing Trust (landlord) (security deposit case) re: 312 Manhattan Dr
Petitioner Hasta Magar did not appear and case was dismissed.