

BURLINGTON HOUSING BOARD OF REVIEW

Monday, April 19, 2021

7:00 p.m.

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

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81705036833>

Or One tap mobile:

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Webinar ID: 817 0503 6833

International numbers available: <https://us02web.zoom.us/j/81705036833>

AGENDA

1. Rebecca Martin (tenant); Group Five Investments LLC (landlord) (security deposit case) re: 500 Pine Street, Apt. 4E

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.

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Minutes

Board Members present: Josh O'Hara, Betsy McGavisk, Charlie Gliserman, Patrick Murphy and Olivia Pena

Staff present: Lisa Jones

1. Rebecca Martin (tenant); Group Five Investments LLC (landlord) (security deposit case) re: 500 Pine Street, Apt. 4E
Present were: Rebecca Martin (tenant), Mac Stevens (for landlord). Both parties were sworn in. Both parties presented evidence and testimony to the Board. Hearing concluded.

Meeting adjourned at 7:22 p.m.

Board deliberated in private.

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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: _____

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara
Board Chair

cc: Rebecca Martin
Group Five Investments LLC

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

**In re: Request for Hearing of REBECCA)
MARTIN Regarding Withholding of)
Security Deposit by GROUP FIVE) Security Deposit Appeal
INVESTMENTS LLC for Rental Unit at)
500 Pine Street, Apt. 4E)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on April 19, 2021; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy, Betsy McGavisk, Olivia Pena and Charlie Gliserman were also present. Petitioner Rebecca Martin was present and testified. Respondent Group Five Investments, LLC was represented at the hearing by Mac Stevens 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 Group Five Investments, LLC is the owner of a rental unit, 500 Pine Street, Apt. 4E, in the City of Burlington which is the subject of these proceedings. Mac Stevens is one of the property managers for the property.
2. Petitioner Rebecca Martin moved into the rental unit on December 1, 2019 under the terms of a written lease.
3. Petitioner paid a security deposit of \$1,400.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.
4. On March 5, 2021, the parties executed an agreement to rescind the lease in effect at the time; by that agreement, the lease was terminated on March 15, 2021. At that time, Kathy Parrott (another property manager) signed a Vermont State Housing Authority “landlord

certification” form indicating that petitioner was vacating the apartment in good standing: she was current in her rent and utility payments, and she did not cause any damage to the unit. In accordance with the lease rescission, petitioner vacated the unit on March 15, 2021.

5. On March 24, 2021, petitioner went to respondent’s office and gave Kathy Parrott a letter requesting the return of her deposit. At that time, Ms. Parrott provided petitioner with a closing statement indicating there was \$733.00 in unpaid rent due; she also gave petitioner a sticky note indicating there were cleaning charges and a charge to remove items from the apartment. The closing statement provided on March 24 did not include notice to petitioner that she could appeal the withholding of the deposit to this Board, nor did it include an itemized list of other damages.

6. On April 6, 2021, petitioner received a letter from respondent indicating that she owed them \$175.00; the letter itemized damages totaling \$1575.00. Petitioner testified that the letter did not include notice of her right to appeal the withholding of her deposit to this Board. Mac Stevens, on the other hand, testified that respondent’s standard form includes notice of a tenant’s right to appeal to this Board. Neither party submitted a copy of the letter into evidence. Mr. Stevens, however, acknowledged that the letter was not timely. A note in petitioner’s tenancy file indicated there was no forwarding address for petitioner. Mac Stevens did not know what attempts were made to contact petitioner.

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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address is provided. 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

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

all of these requirements forfeits the security deposit. While the parties disputed whether or not the letter sent by respondent included notice of petitioner's appeal rights, there was no dispute that the letter was not sent within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. 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:

12. Petitioner Rebecca Martin is entitled to recover from respondent Group Five Investments, LLC the following amounts:

a) \$1,400.00 of the principal amount of the security deposit improperly withheld after March 29, 2021;

b) Interest in the amount of \$4.68 on the entire deposit for the period December 1, 2019 through March 29, 2021; and

c) Additional interest of \$0.01 per day from March 30, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this ____ day of _____, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

\s\ Josh O'Hara
Josh O'Hara

\s\ Patrick Murphy
Patrick Murphy

\s\ Charlie Gliserman
Charlie Gliserman

\s\ Betsy McGavisk
Betsy McGavisk

\s\ Olivia Pena
Olivia Pena