

BURLINGTON HOUSING BOARD OF REVIEW

Monday, April 5, 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/84918829710>

Or iPhone one-tap:

US: +13017158592,,84918829710# or +13126266799,,84918829710#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

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Webinar ID: 849 1882 9710

International numbers available: <https://us02web.zoom.us/j/84918829710>

AGENDA

1. Christophe Byaduniya (tenant); Ahmad Khan/ZOF LLC (landlord) (security deposit case) re: 1357 North Avenue (postponed from meeting of 3/15/21)
2. Lara Miller (tenant); Benjamin Heath (landlord) (security deposit case) re: 52 Oak 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.

BURLINGTON HOUSING BOARD OF REVIEW

Monday, April 5, 2021

7:00 p.m.

Minutes

Board Members present were: Josh O'Hara, Charlie Gliserman and Patrick Murphy

Staff present: Lisa Jones

1. Christophe Byaduniya (tenant); Ahmad Khan/ZOF LLC (landlord) (security deposit case) re: 1357 North Avenue (postponed from meeting of 3/15/21)
Present were: Christophe Byaduniya, Baudouin Mulolo (interpreter for Christophe Byaduniya), Cathy Kelly, Ahmad Khan.
All parties were sworn in. The Board took testimony and evidence from both parties. The Board ruled that the notice requirements were not met and indicated their written decision would order the landlord to return the deposit money. The landlord objected to the ruling based on a technicality.
2. Lara Miller (tenant); Benjamin Heath (landlord) (security deposit case) re: 52 Oak Street
Present were: Benjamin Heath.
The Board indicated the case would likely be dismissed as the party who requested the hearing (ie, the tenant) did not appear. Board indicated case might be rescheduled if the tenant missed the hearing for a valid reason.

Meeting adjourned at 7:42 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: 4/20/2021

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

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

cc: Christophe Byaduniya
Cathy Kelly
Ahmad Khan

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

**In re: Request for Hearing of CHRISTOPHE)
BYADUNIYA Regarding Withholding of) Security Deposit Appeal
Security Deposit by ZOF LLC for Rental)
Unit at 1357 North Avenue)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on April 5, 2021; the hearing was held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Patrick Murphy and Charlie Gliserman were also present. Petitioner Christophe Byaduniya was present and testified. Respondent ZOF LLC was represented at the hearing by Ahmad Khan who testified. Also present was Baudouin Mulolo who served as interpreter for Christophe Byaduniya and Cathy Kelly.

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 ZOF LLC is the owner of a rental unit, 1357 North Avenue, in the City of Burlington which is the subject of these proceedings. Ahmad Khan manages the property.
2. Petitioner Christophe Byaduniya moved into the rental unit with a written lease which ran February 1, 2020 to January 31, 2021.
3. Petitioner paid a security deposit of \$1,500.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on January 8, 2021, in accordance with when he told Ahmad Khan he would be out of the unit. However, Mr. Khan testified that petitioner was out of the unit on January 11, 2021 and the key was returned to him on January 12, 2021. The Board

finds the date of vacating to be January 11, 2021 – the date which Mr. Khan testified was the day petitioner vacated the unit.

5. On January 27, 2021 Ahmad Khan sent a written statement to petitioner itemizing deductions from the deposit. Said statement itemized deductions totaling \$2950.00. None of the deposit was returned. In addition, Mr. Khan did not credit interest to the deposit.

6. Respondent's statement of deductions did not include notice of the tenant's right to request a hearing before this Board to dispute the withholding of the deposit. Ahmad Khan testified he was unaware of the requirement to provide such notice in the statement of deductions.

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 send the 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 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. Respondent did not credit interest to the deposit because the damages exceeded the amount of the security deposit and any interest that accrued. Nonetheless, the Board notes that the written statement should reflect the

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

amount of interest accrued during the tenancy so that a tenant knows interest was credited to the deposit.

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Christophe Byaduniya is entitled to recover from respondent ZOF LLC the following amounts:

a) \$1,500.00 of the principal amount of the security deposit improperly withheld after January 25, 2021;

b) Interest in the amount of \$3.59 on the entire deposit for the period February 1, 2020 to January 25, 2021; and

c) Additional interest of \$0.01 per day from January 26, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of April, 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

BODI YA MAPITIO YA MAKAZI

MJI WA BURLINGTON

149 Church Street, Chumba 11

Burlington, Vermont 05401

(802) 865-7122

BODI YA MAPITIO YA MAKAZI

MJI WA BURLINGTON

ILANI YA UAMUZI

Iliyoambatanishwa ni nakala ya "Matokeo ya Ukweli, Hitimisho la Sheria na Utaratibu" katika Bodi ya Mapitio ya Makazi ya Burlington.

Tafadhali kumbuka kuwa mtu aliyeumizwa kwa uamuzi wa Bodi ya Mapitio ya Makazi ana haki ya rufaa katika Mahakama Kuu ya Chittenden. (Angalia Kanuni za Makazi Sehemu ya 18-59 na Amri za Vermont zilizoainishwa, Kichwa 24, Sehemu ya 5006.) Sheria za mahakama zinaweza kuhitaji kwamba rufaa kama hiyo zianzike ndani ya siku thelathini (30) za Agizo la Bodi.

Isipokuwa rufaa imechukuliwa, Agizo la Bodi linapaswa kuzingatiwa kabla ya kumalizika kwa Kipindi cha siku thelathini (30).

Tarehe: 4/20/2021

MJI WA BURLINGTON

BODI YA MAPITIO YA MAKAZI

/s/ Josh O'Hara

Josh O'Hara

Mwenyekiti wa Bodi

nk: Christophe Byaduniya

Cathy Kelly

Ahmad Khan

MJI WA BURLINGTON, VERMONT

BODI YA MAPITIO YA MAKAZI

KUHUSU: Ombi la Kusikilizwa kwa CHRISTOPHE)
BYADUNIYA Kuhusu Kuzuia) Rufaa ya Amana ya
Usalama
Amana ya Usalama na ZOF LLC kwa Kukodisha)
Kitengo katika 1357 North Avenue)

UAMUZI NA UTARATIBU

Kusikilizwa kwa kesi iliyotajwa hapo juu mbele ya Bodi ya Mapitio ya Makazi mnamo Aprili 5, 2021; kusikilizwa ilifanyika mtandaoni kupitia Zoom. Mwenyekiti wa Bodi Josh O'Hara alisimamia. Wajumbe wa Bodi Patrick Murphy na Charlie Gliserman pia walikuwepo. Mlalamikaji Christophe Byaduniya alikuwepo na alishuhudia. Mhojiwa ZOF LLC aliwakilishwa katika kusikilizwa na Ahmad Khan ambaye alishuhudia. Alikuwepo pia Baudouin Mulolo ambaye aliwahi kuwa mkalimani wa Christophe Byaduniya na Cathy Kelly.

Kwa kuzingatia ushahidi na sheria husika, Bodi inafanya kufuatia Matokeo ya Ukweli, Hitimisho la Sheria na Utaratibu:

Matokeo ya Ukweli

1. Mhojiwa ZOF LLC ni mmiliki wa kitengo cha kukodisha, 1357 North Avenue, katika Jiji la Burlington ambayo ni somo la kesi hizi. Ahmad Khan anasimamia mali hiyo.
2. Mlalamikaji Christophe Byaduniya aliamia katika kitengo cha kukodisha na kukodisha maandishi ambayo alikimbia Februari 1, 2020 hadi Januari 31, 2021.
3. Mlalamikaji alilipa amana ya usalama ya \$ 1,500.00 kwa mhojiwa. Mlalamikaji alikuwa kupokea amana yake ya usalama mwishoni mwa muda ya kukodisha ikiwa kiasi chochote kilicholipia uharibifu kimetolewa.
4. Mlalamikaji alihama kutoka kwenye kitengo siku ya Januari 8, 2021, kwa mujibu wa alivyomwahidi Ahmad Khan angekuwa amehama hutoka kitengo hicho. Hata hivyo, Bw. Khan alishuhudia kwamba mlalamikaji alikuwa amehama kutoka kitengo hicho Januari 11, 2021 na ufunguo ulirudishwa kwake Januari 12, 2021. Bodi 3 inapata tarehe ya kuhama kuwa Januari 11, 2021 – tarehe ambayo Mheshimiwa Khan alishuhudia ilikuwa siku mlalamikaji alikihama kitengo hicho.
5. Mnamo Januari 27, 2021 Ahmad Khan alituma tamko la maandishi kwa mlalamikaji akieleza punguzo kutoka kwa amana, na punguzo lina jumla ya dola 2950.00. Hakuna kiwango chochote cha amana kilirudishwa. Aidha, Bw. Khan hakutoa riba ya amana.
6. Taarifa ya mhojiwa ya punguzo haikujumuisha ilani ya haki ya mpangaji kuleta ombi la kusikilizwa mbele ya Bodi hii ili kupinga uzuiaji wa amana. Ahmad Khan alishuhudia kuwa hakujua sharti la kutoa ilani kama hiyo katika taarifa ya punguzo.

Hitimisho la Sheria

7. Agizo la amana ya usalama wa Burlington, Kanuni za Makazi ya Chini Sec. 18-120, ilianza kutumika Aprili 10, 1986 na inasimamia mipango yoyote ya kukodisha kwa vitengo vya makao katika Mji wa Burlington vilivyotumiwa au kufanywa upya baada ya tarehe hiyo.
8. Sheria ya Mwenye nyumba ya Vermont na Mpangaji, sasa imewekwa katika 9 V.S.A. Sec. 4451-68, inatumika kwa mikataba ya kukodisha kwa mali ya makazi iliyotumika, kupanuliwa au kufanywa upya au baada ya Julai 1, 1986. Masharti yake ni "kudokezwa katika mikataba yote ya kukodisha" ambayo inatumika. 9 V.S.A. Sec. 4453.
9. Chini ya agizo la jiji, pamoja na sheria ya serikali (masharti ambayo lazima yadokelewe katika makubaliano ya kukodisha vyama), mwenye nyumba lazima arudishe amana ya usalama kwa mpangaji ndani ya 14 siku kuanzia tarehe ambayo mpangaji alihama au kutelekezwa kitengo cha makao, na maandishi kuadhibu kupunguzwa kwake. Agizo la jiji pia linaamuru kwamba taarifa iliyoandikwa lazima kumfahamisha mpangaji wa fursa ya kuomba kusikilizwa mbele ya Bodi ya Makazi ya Burlington Mapitio ndani ya siku 30 baada ya kupokelewa kwa taarifa ya mwenye nyumba. Kanuni ya Chini ya Makazi 4 Sec. 18-120 (c). Taarifa na malipo yoyote lazima yatolewe kwa mkono au kutumwa kwa barua. Kiwango cha chini cha Msimbo wa Makazi Sec. 18-120(c). Ikiwa mwenye nyumba atashindwa kurejesha amana na taarifa ndani ya siku 14, mwenye nyumba anaacha haki ya kuzuia sehemu yoyote ya amana ya usalama. Angalia, Kiwango cha chini cha Msimbo wa Makazi Sec. 18-120(c) na 9 V.S.A. Sec. 4461 (e).
10. Mwenye nyumba anayeamua kuhifadhi sehemu ya amana au amana yote ya usalama lazima azingatie mahitaji 3 maalum ya agizo: amana lazima irudishwe ndani ya siku 14 za tarehe mpangaji alihama au kuhama kutoka kwa kitengo cha kukodisha na taarifa iliyoandikwa inayoonyesha punguzo; kauli lazima iwe na taarifa ya haki ya mpangaji kukata rufaa kwenye Makazi Bodi ya Mapitio; na taarifa lazima iwasilishwe kwa mkono au kutumwa na barua iliyothibitishwa.¹ Angalia Lieberman d. Circe, Nambari. S21-13 Cncv (Crawford, J., Machi 27, 2013) na Makazi ya Chini ya Kanuni Sec. 18-120(c). Mahakama Kuu ya Vermont ilihitaji utekelezaji halisi wa haya mahitaji katika *In Re Soon Kwon*, 189 Vt 598 (2011). Ipasavyo, mwenye nyumba ambaye anashindwa kukutana na mahitaji haya yote anapoteza amana ya usalama. Katika kesi hii, mhojiwa alishindwa kutii na mahitaji ya taarifa kwa kushindwa kutuma taarifa iliyowekwa ndani ya siku 14 za tarehe ya kuhama na kwa kushindwa kujumuisha haki za rufaa za mlalamikaji katika taarifa hiyo. Kwa hiyo, Bodi inahitimisha mhojiwa alipoteza haki ya kuzuia kiwango chochote cha amana.
11. Mlalamikaji ana haki ya kurejeshewa riba kwenye amana ya usalama. Makazi ya chini ya Kanuni Sec. 18-120(c). Kanuni za Makazi zinahitaji amana ya usalama kushikiliwa na mmiliki katika akaunti ya kuzaa riba na kiwango cha riba sawa na benki ya sasa ya Vermont katika akaunti ya akiba ya kitabu. Sec. 18-120 (a). Bodi inatumia kiwango cha riba kinachopatikana kwa sasa katika akaunti nyingi za akiba za benki - 0.25% riba rahisi kila mwaka. Mhojiwa hakutoa riba ya amana kwa sababu uharibifu ulizidi kiasi cha amana ya usalama na riba yoyote ambayo ilipatikana. Hata

hivyo, Bodi inabainisha kuwa taarifa iliyoandikwa inapaswa kuakisi riba ya muda wa umiliki ili mmiliki aelewe ribailitekelezewa amana.

Utaratibu

Ipasavyo, IMEAMRIWA:

12. Mlalamikaji Christophe Byaduniya ana haki ya kupata nafuu kutoka kwa mhojiwa ZOF LLC kiasi kifuatacho:
- a) \$ 1,500.00 ya kiasi kikuu cha amana ya usalama imefichwa vibaya baada ya Januari 25, 2021;
 - b) Riba kwa kiasi cha \$3.59 kwenye amana nzima kwa kipindi cha Februari 1, 2020 hadi Januari 25, 2021; Na
 - c) Riba ya ziada ya \$ 0.01 kwa siku kuanzia Januari 26, 2021 hadi tarehe kama hiyo kiasi kilichofichwa vibaya kinarudishwa kwa ombi.

Tarehe imewekewa huko Burlington, Vermont hii ya siku ya 20 ya Aprili, 2021.

MJI WA BURLINGTON
BODI YA MAPITIO YA MAKAZI

/s/ Josh O'Hara
Josh O'Hara

/ s / Patrick Murphy
Patrick Murphy

/s/ Charlie Gliserman
Charlie Gliserman