

BURLINGTON HOUSING BOARD OF REVIEW

Monday, March 1, 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/83717450490>

Or iPhone one-tap :

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Or Telephone:

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Webinar ID: 837 1745 0490

International numbers available: <https://us02web.zoom.us/j/83717450490>

AGENDA

1. Eryn Sheehan (tenant); William Davenport (landlord) (security deposit case) re: 30 Strong Street, #2

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, Charlie Gliserman, Patrick Murphy and Olivia Pena.

Staff present: Lisa Jones

1. Eryn Sheehan (tenant); William Davenport (landlord) (security deposit case) re: 30 Strong Street, #2
Present were: Eryn Sheehan, William Davenport and Leah Curren. All parties were sworn in.
Board took evidence and testimony from both parties and hearing was concluded.

Meeting adjourned at 7:16 p.m.

Board deliberated in private.



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 3/8/21

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara
Board Chair

cc: Eryn Sheehan
William Davenport

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

**In re: Request for Hearing of ERYN SHEEHAN)
Regarding Withholding of Security) Security Deposit Appeal
Deposit by WILLIAM DAVENPORT for)
Rental Unit at 30 Strong Street, #2)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on March 1, 2021; the hearing was held virtually via Zoom. Board Chair Josh O'Hara presided. Board Members Patrick Murphy, Charlie Gliserman and Olivia Pena were also present. Petitioner Eryn Sheehan was present and testified. Respondent William Davenport was also present and testified. Also present was Leah Curren.

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 William Davenport is the owner of a rental unit, 30 Strong Street, #2, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Eryn Sheehan moved into the rental unit with a written lease which ran from June 1, 2017 to May 31, 2018; thereafter, the lease automatically renewed on a month-to-month basis. Initial 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 at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on January 13, 2021.
5. On January 14, 2021 respondent sent a written statement to petitioner itemizing deductions from the deposit. Said statement itemized deductions totaling \$2170.00. None of the

deposit was returned. Respondent did not credit interest to the deposit because the amount of the deductions exceeded the amount of the deposit and any interest that would accrued.

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; respondent was unaware of the requirement to provide such notice in the statement of deductions. Although respondent has owned and rented the unit since 2005, he testified he has not withheld a deposit in the past so he is unfamiliar with the process when a deposit is withheld.

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.

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

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

Order

Accordingly, it is hereby ORDERED:

12. Petitioner Eryn Sheehan is entitled to recover from respondent William Davenport the following amounts:

- a) \$1,000.00 of the principal amount of the security deposit improperly withheld after January 27, 2021;
- b) Interest in the amount of \$9.18 on the entire deposit for the period June 1, 2017 to January 27, 2021; and
- c) Additional interest of \$0.007 per day from January 28, 2021 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 8th day of March, 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/ Olivia Pena
Olivia Pena