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 3/8/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Anthony Corman
Joe Handy for Jeannine Handy Revocable Trust

The programs and services of the City of Burlington are accessible to people with disabilities.
For disability access information for the City Attorney's Office, please call 865-7121 (TTY information - 865-7142).

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

In re: Request for Hearing of ANTHONY CORMAN Regarding Withholding of Security Deposit by JEANNINE HANDY REVOCABLE TRUST for Rental Unit at 80 Austin Drive, Unit 103	)))))	**CITY OF BURLINGTON HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on February 6, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Anthony Corman was present and testified. Respondent Jeannine Handy Revocable Trust was represented at the hearing by Joseph Handy.

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 Jeannine Handy Revocable Trust is the owner of a rental unit, 80 Austin Drive, Unit 103, in the City of Burlington which is the subject of these proceedings. Joseph Handy manages the property.

2. Petitioner moved into the rental unit with a lease which ran from December 17, 2015 to December 31, 2016. Monthly rent was $1400.00.

3. Petitioner paid a security deposit of $1700.00[1] 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 December 14, 2016. Petitioner returned the keys to Joseph Handy on that date and Mr. Handy knew petitioner was no longer living there.

5. On January 10, 2017, respondent sent a written statement to petitioner at the address of the rental unit, even though petitioner provided a forwarding address to respondent's property manager. Said

[1] $300.00 of the security deposit was for petitioner's dog.

statement itemized deductions totaling $675.00 from the deposit. Respondent sent a check in the amount of $1,028.40 with the statement. Petitioner did not receive the statement or the check. When questioned about the timeliness of the notice, Mr. Handy argued that he had until January 14, 2017 to provide notice to petitioner because the lease terminated on December 31, 2016. In addition, petitioner, with respondent's permission, returned to the unit on January 8, 2017 to do some painting as a result of an email he received from Joseph Handy; petitioner got the keys to the apartment from respondent.

6. Interest in the amount of $3.40 was credited to the deposit. Respondent's statement included notice of petitioner's right to appeal the withholding of his 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 to the last-known address of the tenant, which may be the address of the rental unit if no forwarding address has been 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). Petitioner vacated the apartment on December 14, 2016; the keys were returned on that date and respondent knew petitioner was no longer living there. Therefore, respondent had 14 days from December 14 to return the deposit and provide a written statement itemizing any deductions from the deposit. Respondent sent notice on January 10, 2017 – 27 days after petitioner vacated the apartment. The Board concludes notice was not timely; consequently, respondent forfeited the right to withhold any part of the deposit.

ORDER

Accordingly, it is hereby ORDERED:

10. Petitioner Anthony Corman is entitled to recover from respondent Jeannine Handy Revocable Trust the following amounts:

a) $1703.40 of the principal amount of the deposit (including interest) improperly withheld after December 28, 2016; and

b) Additional interest of $0.01 per day from December 29, 2016 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 8th of March, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse

Patrick Kearney

Steven Goodkind

Alec Bauer

Josh O'Hara

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 3/8/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse
Board Chair

cc: Bradley Wallen
Patricia Jane & Richard Couture for 364 QCP Road LLC

The programs and services of the City of Burlington are accessible to people with disabilities.
For disability access information for the City Attorney's Office, please call 865-7121 (TTY information - 865-7142)

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

In re: Request for Hearing of BRADLEY WALLEN Regarding Withholding of Security Deposit by 364 QCP ROAD LLC For Rental Unit at 364 Queen City Park Road	)))))	**CITY OF BURLINGTON HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on February 6, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Bradley Wallen was present and testified. Respondent 364 QCP Road LLC was represented at the hearing by Richard Couture.

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 364 QCP Road LLC is the owner of a rental unit, 364 Queen City Park Road, in the City of Burlington which is the subject of these proceedings. Richard Couture has been helping to manage the property since July 2016.

2. Petitioner moved into the rental unit on August 28, 1992. Petitioner paid a security deposit of $555.00. In September 2005, the deposit increased to $775.00. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

3. Petitioner vacated the apartment on January 6, 2017.

4. On January 6, 2017, Richard Couture returned $625.00 of the deposit to petitioner along with a statement itemizing deductions taken from the deposit. The written statement did not inform petitioner of his right to appeal the withholding of the deposit to this Board.

5. Interest in the amount of $180.00 was credited to the deposit. Richard Couture calculated the amount of interest using an interest rate of 1%, compounded annually, even though the current interest

rate is lower than that. Petitioner did not believe the interest was calculated correctly based on the amount of interest returned to him in 1992 by a previous landlord; that landlord calculated the interest due using a rate of 5% for the period 1989 to 1992.

CONCLUSIONS OF LAW

6. 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.

7. 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). Timely notice was provided.

9. 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.

10. City ordinance requires that a security deposit be held by a landlord in an interest-bearing account, with an interest rate at least equivalent to a current Vermont bank passbook savings rate. Minimum Housing Code Sec. 18-120(a)(1). Petitioner disputed the amount of interest returned to him by respondent, but did not provide evidence of the interest rates over the period of his tenancy. As the Board typically calculates interest using the current Vermont bank passbook savings rate (which is less than 1%), the Board concludes that respondent's calculation of interest was reasonable. If respondent's calculated interest of $180.00 was credited to petitioner's $775.00 deposit, he would have been entitled to a return of his deposit equaling $955.00. The difference between that amount and the $625.00 previously returned to petitioner is $330.00.

ORDER

Accordingly, it is hereby ORDERED:

11. Petitioner Bradley Wallen is entitled to recover from respondent 364 QCP Road LLC the following amounts:

a) $330.00 of the principal amount of the deposit withheld after January 20, 2017; and

b) Additional interest of $0.002 per day from January 21, 2017 until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 8th of March, 2017.

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

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Ben Traverse

Patrick Kearney

Steven Goodkind

Alec Bauer

Josh O'Hara