

BURLINGTON HOUSING BOARD OF REVIEW

Monday, February 4, 2019

7:00 p.m.

**Community Room, Burlington Police Department
1 North Avenue**

AGENDA

1. Elizabeth Johnston (tenant); Stuart McGowan/Chris Freije (landlord) (security deposit case) re: 227 Intervale Avenue, #3

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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AMENDED AGENDA

1. Elizabeth Johnston (tenant); Stuart McGowan/Chris Freije (landlord) (security deposit case) re: 227 Intervale Avenue, #3
2. Cameron Bradley (tenant); Mark Kuprych (landlord) (security deposit case) re: 34 S. Willard St, Apt. 315

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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 4/3/2019

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Vice Chair

cc: Cameron Bradley
Mark Kuprych

**In re: Request for Hearing of CAMERON)
BRADLEY Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by MARK KUPRYCH) HOUSING BOARD OF REVIEW
for Rental Unit at 34 South Willard St,)
Apt. 315)**

The above-named hearing came before the Housing Board of Review on February 4, 2019. Board Vice Chair Josh O'Hara presided. Board Members Ben Traverse, Patrick Kearney and Steven Goodkind were also present. Petitioner Cameron Bradley was present and testified. Respondent Mark Kuprych, although notified of the hearing and the opportunity to be heard, was not present.

On February 12, 2019, Board Chair Traverse wrote Mark Kuprych and explained that the evidence from the February 4 hearing had shown Mr. Kuprych had sent the notice of withholding beyond the 14-day limit. If Mr. Kuprych had evidence to the contrary, Chair Traverse invited Mr. Kuprych to specify what evidence he had, and the Board would consider rescheduling the hearing. As of the date of this decision, Mr. Kuprych has not responded to the February 12 letter. Each party having now had a fair and adequate opportunity to be heard, the proceedings before the Board are now concluded.

FINDINGS OF FACT

- 1

3. Petitioner paid a security deposit of \$1150.00 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 December 28, 2018. The parties did a walk-through of the apartment on December 28 and petitioner returned the keys to respondent at that time.

5. On January 12, 2019, respondent sent a statement to petitioner informing him that \$1048.00 of the deposit was being withheld for damages. Respondent returned \$125.40 of the deposit to petitioner. Interest in the amount of \$23.40 was credited to the deposit. Respondent's statement informed petitioner of his right to appeal any deduction to this Board. Petitioner disputed the timeliness of the notice and the deduction related to the water use.

6. Respondent deducted \$854.00 from petitioner's deposit for water overuse. There are 4 apartments in the building. The water is not metered separately. The deduction is for 5 months (September – December, 2017 and January 2018) when the water usage was above the normal usage; respondent charged petitioner the difference between the normal usage and the actual usage. Respondent attributed the increased water usage to a problem with petitioner's toilet.

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 return the deposit and written statement within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Even if respondent's written statement were timely, the Board would have concluded the deduction for water usage was not proper. There is no way to attribute the excess water usage to petitioner since the water use is not separately metered.

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioner Cameron Bradley is entitled to recover from Mark Kuprych the following amounts:

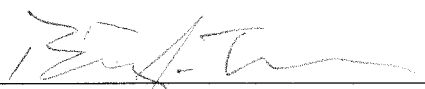
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

a) \$1048.00 of the principal amount of the deposit (including accrued interest) improperly withheld after January 11, 2019; and

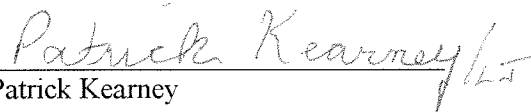
b) Additional interest of \$0.007 per day from January 12, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 3rd day of April, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Patrick Kearney


Steven Goodkind