

BURLINGTON HOUSING BOARD OF REVIEW

Tuesday, January 21, 2020

7:00 p.m.

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

AGENDA

1. Justin Barrows (tenant); Frank Marcou (landlord) (security deposit case) re: 32 Rose St, #6 (rescheduled from 1/6/20)
2. Mydung Nguyen (tenant); Hai Lin (landlord) (security deposit case) re: 1427 North Ave (downstairs)
3. Linda Massie (tenant); Cathedral Square Corp. (landlord) (security deposit case) re: 72 Heineberg Rd, Apt. 119
4. Jacklyn Hickerson (tenant); Salmon Run Housing LP/Champlain Housing Trust (landlord) (security deposit case) re: 220 Riverside Ave, #G12

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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 2/19/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Justin Barrows
Frank Marcou

**In re: Request for Hearing of JUSTIN)
BARROWS Regarding Withholding of) Security Deposit Appeal
Security Deposit by FRANK MARCOU)
for Rental Unit at 32 Rose Street, #6)**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Respondent Frank Marcou is the owner of a rental unit, 32 Rose Street, #6, in the City of Burlington which is the subject of these proceedings.

2. Petitioner Justin Barrows moved into the rental unit on June 1, 2017 under the terms of a written lease. Monthly rent was \$950.00.

3. Petitioner paid a security deposit of \$925.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.

4. The parties disputed the vacate date. Petitioner testified he moved out of the apartment on September 30, 2019, but left some items in the apartment with the permission of the new tenant. Petitioner gave the new tenant one of the keys to the apartment even though respondent had instructed him to leave the keys in a kitchen drawer when he was finished

moving out. Respondent testified that when workers went to the unit on October 1, petitioner and his belongings were still in the apartment and petitioner refused them access to the apartment. Petitioner denied refusing accessing to unit. Petitioner had belongings in the unit on October 1 and 2. Respondent considered October 3, 2019 as the date petitioner was fully moved out of the unit. The Board finds petitioner was completely out of the unit on October 2, 2019.

5. On October 15, 2019, respondent sent a written statement, by certified mail, to petitioner. Said statement itemized deductions of \$325.00 from the deposit. The written statement indicates \$573.00 was returned to petitioner. However, the Board's calculations indicate \$623.00 should have been returned to petitioner. Petitioner disputed the timeliness of the notice of withholding, as well as the deductions taken from the deposit.

6. Interest in the amount of \$23.00 was credited to the deposit.

7. Respondent deducted a total of \$115 for cleaning related charges: \$40 for general cleaning and \$75 to shampoo the carpet. Petitioner did not clean the kitchen when he moved out; as for the rest of the apartment, he testified that he tidied it before leaving, including vacuuming the carpets. Petitioner also argued that the apartment was not clean when he moved into it and he felt justified in leaving it in the same condition. With respect to shampooing the carpet, petitioner testified the carpet was stained when he moved into the unit; in addition, he shampooed the carpet when he moved into the apartment so did not feel as though it was his responsibility to do it again. The move-in inspection checklist, signed by both parties, indicates the apartment was clean when petitioner moved into it. With respect to the carpet, the checklist notes some stains. Respondent testified the large stains on the carpet that necessitated shampooing it were not there when petitioner moved into the apartment. Photos submitted by

respondent show the kitchen and bathroom needed to be cleaned; in addition, photos show some large stains on the carpet, as well as debris on it that needed vacuuming.

8. Respondent deducted \$60 for painting. Respondent told petitioner he could paint in the apartment as long as the colors were neutral; if the colors were not neutral and the new tenant did not like the color, respondent told petitioner he would be responsible for repainting. Petitioner painted his bedroom and the kitchen cabinets and trim in the kitchen. The painting in the bedroom was acceptable. However, the kitchen cabinets were painted bright red and the kitchen trim painted blue. In addition, there was a hole in a wall that was patched and needed painting.

9. Respondent deducted \$50 to remove trash and furniture left in the unit by petitioner. Petitioner denied leaving any trash or items behind; he testified that he only left items that the new tenant said he wanted. However, respondent testified the new tenant only agreed to keep a rocking chair which was on the porch. Respondent disposed of all other items left by petitioner: baby gates, table, snowboards, wooden pallets and outdoor folding chairs, all of which were documented in photos submitted by respondent.

10. Respondent deducted \$60 to replace a broken bar on the door of the refrigerator. Petitioner disputed the cost to replace the bar as he found the item on Amazon for \$23.95. Respondent testified the deduction reflected what he was charged by the appliance person to make the repair. As of the date of the Board's hearing, the refrigerator bar had not been replaced or fixed.

11. Respondent deducted \$40 to repair a broken window in the kitchen. Petitioner denied breaking the window and testified the window was broken during his entire tenancy. The move-in inspection checklist does not note any broken windows in the apartment when petitioner

moved into it. In addition, a city inspection report for the unit dated June 4, 2018 and submitted by petitioner does not indicate a broken window in the kitchen.

Conclusions of Law

12. 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.

13. 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.

14. 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 and proper notice was provided.

15. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear

which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay, and for expenses required to remove from the rental unit articles abandoned by the tenant.

Section 18-2 defines normal wear and tear as

the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well as its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

16. Based on the evidence, the Board unanimously concludes that the deductions for cleaning, shampooing the carpet and painting were reasonable. The need to clean the unit, including shampooing the carpet, was beyond normal wear and tear and attributable to petitioner. That the petitioner believed the apartment was unclean when he moved in did not absolve him of his obligation to return the apartment to the respondent in a reasonably clean condition. With respect to painting, the need to paint was attributable to damage caused by petitioner, and thus was a proper deduction. The Board also concludes the amount deducted for painting was reasonable.

17. Based on the evidence, the Board concludes by a vote of 3 to 1 that the deductions to remove trash and furniture and to repair the broken window were reasonable. Section 18-120(c) of the Minimum Housing Code specifically allows for deductions from the security deposit to remove articles abandoned by a tenant. Petitioner left items in the apartment that needed to be

removed so it was reasonable for respondent to deduct the cost to do that from the deposit. Similarly, the kitchen window was broken during petitioner's tenancy and attributable to petitioner.

18. Based on the evidence, the Board concludes the deduction to replace the broken refrigerator bar was not proper. Petitioner made reasonable use of the refrigerator without being negligent or careless. Therefore, the Board concludes the damage was a result of normal wear and tear.

Order

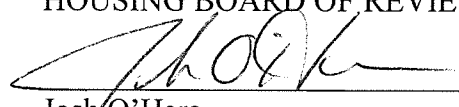
Accordingly, it is hereby ORDERED:

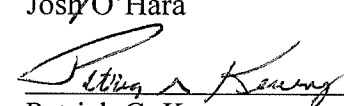
19. Petitioner Justin Barrows is entitled to recover from respondent Frank Marcou the following amounts:

- a) \$110.00¹ of the principal amount of the security deposit improperly withheld after October 16, 2019; and
- b) Additional interest of \$0.0004 per day from October 17, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19th day of February, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick G. Kearney

Olivia Pena

¹ The \$110.00 to be returned includes the \$50 error made by respondent when he calculated the amount to be returned to petitioner.


Patrick Murphy



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CITY OF BURLINGTON

NOTICE OF DECISION

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DATED 2/19/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Jacklyn Hickerson
Champlain Housing Trust

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

**In re: Request for Hearing of JACKLYN)
 HICKERSON Regarding Withholding of) Security Deposit Appeal
 Security Deposit by SALMON RUN)
 HOUSING LP/CHAMPLAIN HOUSING)
 TRUST for Rental Unit at 220 Riverside)
 Avenue, #G12)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 21, 2020. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy and Olivia Pena were also present. Petitioner Jacklyn Hickerson was present and testified. Respondent Salmon Run Housing LP/Champlain Housing Trust was represented at the hearing by Dan Mendl and Sara Maddocks 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 Salmon Run Housing LP/Champlain Housing Trust is the owner of a rental unit, 220 Riverside Avenue,#G12, in the City of Burlington which is the subject of these proceedings. Dan Mendl and Sara Maddocks from Champlain Housing Trust ("CHT") manage the property.

2. Petitioner Jacklyn Hickerson moved into the rental unit on August 14, 1996. Petitioner paid a deposit of \$515.00 to respondent. Petitioner was to receive back her security deposit at the end of the lease minus any amounts withheld for damages.

3. The vacate date was in dispute. Petitioner closed on her new home on November 9, 2019 and moved most of her belongings out of the apartment on that date. It was her

understanding that she had an agreement with another property manager at CHT, Jusinta, that she would return the keys to the apartment when she finished moving all her belongings out and cleaned. However, when petitioner returned to the apartment on November 15, her keys did not work on the apartment door and she left. Petitioner called CHT and arranged to meet a maintenance person at the apartment on November 17 so that she could get the rest of her belongings; petitioner was only able to remove the rest of her belongings and was unable to clean. Dan Mendl had the locks to the apartment changed on November 14, 2019 because he believed petitioner had moved out of the apartment based on an email she sent to him on September 29. The Board finds the vacate date to be November 14, 2019 – the date on which respondent took possession of the apartment.

4. On November 26, 2019, respondent sent petitioner a statement indicating prorated rent was being withheld from the deposit for the period November 1, 2019 to November 18, 2019. Respondent returned \$29.78 of the deposit to petitioner. Petitioner disputed the prorated rent being charged by CHT arguing that she should not have been charged for rent for the days after the locks were changed. Respondent agreed and revised the statement and returned an additional \$121.00 to petitioner on December 27, 2019. Both statements informed petitioner of her right to request a hearing before this Board to dispute the withholding of her deposit. Petitioner argued that she did not receive proper notice.

5. Interest in the amount of \$239.78 was credited to the deposit. Petitioner questioned the amount of interest credited to her deposit. Respondent calculated simple interest using an online calculator with a 2% annual interest rate. Petitioner did not provide her own calculations.

6. Petitioner also argued that the deposit was willfully withheld because she had an agreement with Jusinta at CHT about when she would move out of the apartment, but Dan Mendl had the locks changed on November 14 before she finished moving out.

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). If the failure to return a security deposit is willful, the landlord shall be liable for double the amount wrongfully withheld. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

10. Petitioner argued that she did not receive proper notice. The Board found the vacate date to be November 14, 2019. Respondent sent an itemized statement to petitioner on November 26, 2019 and returned \$29.78 of the deposit on that date. The statement informed petitioner of her appeal rights. The statement was sent within 14 days of the vacate date. When petitioner disputed the amount withheld, respondent revised the statement and sent it to her on December 27, 2019 with additional money. The fact that respondent agreed to revise the amount withheld does not mean the statement sent on November 26 was not proper. The Board concludes proper notice was given.

11. Petitioner also argued that the withholding of the deposit was willful because she had an agreement with Jusinta at CHT about the move out date, but then Dan Mendl had the locks changed. Dan Mendl believed petitioner had moved out so it was reasonable for him to have changed the locks when the keys were not returned. The Board concludes that respondent's withholding was not willful.

12. Petitioner also questioned the amount of interest credited to her deposit as there was no indication on the itemized statement as to how the interest was calculated. Section 18-120(a) of the Minimum 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's calculation of interest was based on a simple interest calculator found online and used an interest rate of 2% per year. The Board concludes interest was properly credited.

Order

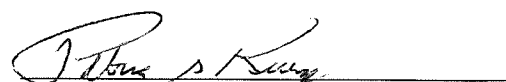
Accordingly, it is hereby ORDERED:

13. Petitioner Jacklyn Hickerson's request for relief is DENIED.

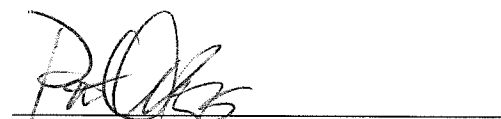
DATED at Burlington, Vermont this 19th day of February,
2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick G. Kearney


Olivia Pena


Patrick Murphy



HOUSING BOARD OF REVIEW

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CITY OF BURLINGTON**

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DATED 2/19/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Mydung Nguyen
Hai Lin

**In re: Request for Hearing of MYDUNG)
NGUYEN Regarding Withholding of) Security Deposit Appeal
Security Deposit by HAI LIN for)
Rental Unit at 1427 North Avenue)**

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

1. Respondent Hai Lin is the owner of a rental unit, 1427 North Avenue, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Mydung Nguyen moved into the rental unit on May 1, 2018 under the terms of a written lease. The lease was renewed on May 20, 2019 for the period May 1, 2019 through April 30, 2020.
3. Petitioner paid a security deposit of \$1725.00 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 October 31, 2019.
5. On November 18, 2019, respondent sent petitioner (by text) a list of deductions from the deposit. Respondent indicated that he would send \$1,000.00 back to her. The list did not

include notice to petitioner of her opportunity to request a hearing before this Board to dispute the deductions. Petitioner is disputing the withholding of \$725 from her deposit.

6. Interest was not credited to the 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. 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 and by failing to return the deposit within 14 days of the vacate date. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

11. Petitioners are 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 Mydung Nguyen is entitled to recover from respondent Hai Lin the following amounts:

a) \$725.00 of the principal amount of the security deposit improperly withheld after November 14, 2019;

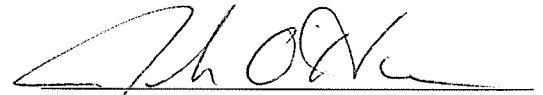
¹ An amendment to Sec. 18-120(c) removing the "certified mail" requirement took effect on January 7, 2015.

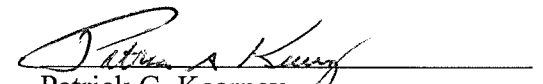
b) Interest in the amount of \$6.28 on the entire deposit for the period May 1, 2018 to November 14, 2019; and

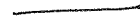
c) Additional interest of \$0.007 per day from November 15, 2019 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 19th day of February, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick G. Kearney


Olivia Pena


Patrick Murphy

BURLINGTON HOUSING BOARD OF REVIEW

Tuesday, January 21, 2020

7:00 p.m.

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

Minutes

Members present: Josh O'Hara, Patrick Kearney, Patrick Murphy, Olivia Pena

Staff present: Lisa Jones

1. Justin Barrows (tenant); Frank Marcou (landlord) (security deposit case) re: 32 Rose St, #6 (rescheduled from 1/6/20)
Present were Justin Barrows, Frank Marcou, Douglas Stover; all parties were sworn in. The Board took evidence and testimony from both parties; hearing was concluded.
2. Mydung Nguyen (tenant); Hai Lin (landlord) (security deposit case) re: 1427 North Ave (downstairs)
Present were: Mydung Nguyen, Hai Lin, Yan Feng; all parties were sworn in. The Board took evidence and testimony from both parties; hearing was concluded.
3. Linda Massie (tenant); Cathedral Square Corp. (landlord) (security deposit case) re: 72 Heineberg Rd, Apt. 119
Case was settled prior to the hearing; case closed.
4. Jacklyn Hickerson (tenant); Salmon Run Housing LP/Champlain Housing Trust (landlord) (security deposit case) re: 220 Riverside Ave, #G12
Present were: Jacklyn Hickerson, Dan Mendl, Sara Maddocks; all parties were sworn in. The Board took evidence and testimony from all parties. Hearing was concluded.