

BURLINGTON HOUSING BOARD OF REVIEW

Monday, January 7, 2019

7:00 p.m.

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

AGENDA

1. Benjamin Kay (tenant); Dave Simpson (landlord) (security deposit case) re: 43 No. Union Street, Apt. 4 (postponed from meeting of 12/17/18)

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 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 865-7145.



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

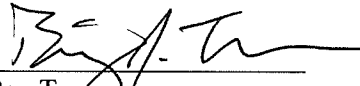
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 2/6/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Benjamin Kay
Dave Simpson

**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

**In re: Request for Hearing of BENJAMIN)
 KAY Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by DAVE SIMPSON) HOUSING BOARD OF REVIEW
 For Rental Unit at 43 No. Union Street,)
 Apt. 4)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on January 7, 2019. Board Chair Ben Traverse presided. Board Members Josh O'Hara, Patrick Kearney, Steven Goodkind and Patrick Murphy were also present. Petitioner Benjamin Kay was present and testified. Respondent Dave Simpson was also present and testified. Also appearing and testifying were Alan Benoit and Olia Kruenova.

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 Dave Simpson is the owner of a rental unit, 43 No. Union Street, Apt. 4, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Benjamin Kay moved into the rental unit on or about January 31, 2014 under the terms of a written lease. The lease was renewed each year with the most recent lease running from June 1, 2017 to May 28, 2018.
3. Petitioner paid a security deposit of \$950.00 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 November 1, 2018.
5. On November 27, 2018, respondent sent an email to Alan Benoit (petitioner's Program Manager) indicating there were deductions from petitioner's security deposit. Respondent estimated that \$75.00 of the deposit would be returned to petitioner. Respondent's email did not include notice of

petitioner's right to appeal the withholding of his deposit to this Board. Respondent returned \$15.00 to petitioner in a check dated December 12, 2018.

6. On the request for hearing form, petitioner indicated he believed the deposit was willfully withheld. When asked at the hearing why he believed the withholding was willful petitioner talked about the lack of a parking space for his car even though the lease provided him with a parking space. Alan Benoit pointed to respondent's failure to return the deposit in a timely manner. Respondent testified that his lack of experience as a landlord resulted in the delay; it took him a while to assess the damages and determine how long it would take to repair the damages. In addition, he was unaware of the notice requirements. Respondent believed he was keeping petitioner and Mr. Benoit informed about the deposit.

7. Interest was not credited to the deposit.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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).

11. 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.

12. Petitioner argued that respondent willfully withheld the deposit. 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). The Board concludes there was insufficient evidence to show the deposit was willfully withheld.

13. 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:

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

14. Petitioner Benjamin Kay is entitled to recover from respondent Alan Benoit the following amounts:

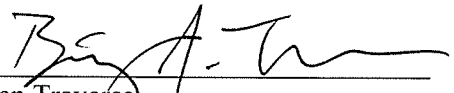
a) \$935.00 of the principal amount of the security deposit improperly withheld after November 15, 2018;

b) Interest in the amount of \$11.35 on the entire deposit for the period January 31, 2014 through November 15, 2018; and

c) Additional interest of \$0.006 per day from November 16, 2018 until such date as the amount improperly withheld is returned to petitioner.

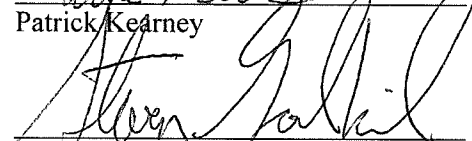
DATED at Burlington, Vermont this 6th day of February, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Patrick Kearney


Steven Goodkind


Patrick Murphy



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

ADDENDUM: Correction of Page 4 Typo re Respondent's Name

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DATED 2/28/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Benjamin Kay
Dave Simpson

**In re: Request for Hearing of BENJAMIN)
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FINDINGS OF FACT

- 1

petitioner's right to appeal the withholding of his deposit to this Board. Respondent returned \$15.00 to petitioner in a check dated December 12, 2018.

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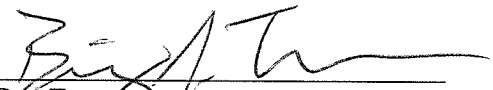
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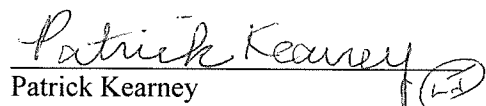
c) Additional interest of \$0.006 per day from November 16, 2018 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 28th day of February, 2019.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Josh O'Hara


Patrick Kearney

Steven Goodkind


Patrick Murphy