

BURLINGTON HOUSING BOARD OF REVIEW
Monday, January 3, 2022, 7:00 p.m.
PUBLIC HEARING NOTICE

Physical location: Sharon Bushor Conference Room, Room 102, 1st Floor, City Hall

Zoom: <https://us02web.zoom.us/j/89997017620>

Webinar ID: 899 9701 7620

Telephone: US: +1 (929) 205-6099 or +1 (301) 715-8592 or +1 (312) 626-6799
or +1 (669) 900-6833 or +1 (253) 215-8782 or +1 (346) 248-7799

International numbers available: <https://us02web.zoom.us/u/kdJvNahV4V>

AGENDA

1. Richard Powell, Laura Mistretta, Adam Noel (tenants); Maea Brandt (landlord)
(security deposit dispute) re: 53 Murray St (rescheduled from meeting of 12/20/21)

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 and Charlie Gliserman

Staff present: Lisa Jones

1. Richard Powell, Laura Mistretta, Adam Noel (tenants); Maea Brandt (landlord) (security deposit dispute) re: 53 Murray St (rescheduled from meeting of 12/20/21)
Present were: Maea Brandt, Richard Powell, Laura Mistretta and Adam Noel.
All parties were sworn in. Evidence and testimony was taken from both parties. Hearing was closed.

Meeting adjourned at 7:47 p.m.

Board deliberations 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 1/19/22

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Richard Powell
Maea Brandt

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

**In re: Request for Hearing of LAURA)
MISTRETTA, RICHARD POWELL)
And ADAM NOEL Regarding) Security Deposit Appeal
Withholding of Security Deposit by)
MAEA BRANDT for Rental Unit at 53)
Murray Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 3, 2022. For purposes of expedition, Board Members Josh O'Hara and Charlie Gliserman were appointed Hearing Officers to hear and decide this matter before the Board. Josh O'Hara presided over the hearing. Petitioners Laura Mistretta, Richard Powell and Adam Noel were present and testified remotely via Zoom. Respondent Maea Brandt was also present and 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 Maea Brandt is the owner of a rental unit, 53 Murray Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Laura Mistretta, Richard Powell and Adam Noel moved into the rental unit at different times between 2019 and 2021. The current written lease ran from June 1, 2021 to May 31, 2022. Monthly rent was \$2200.00.
3. Petitioners paid a security deposit of \$2175.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners vacated the rental unit prior to end of the lease. The unit was vacant as of October 30, 2021.

5. On November 10, 2021, respondent sent petitioners a letter informing them that their deposit was being withheld for nonpayment of November 2021 rent. Respondent's letter informed petitioners that "[y]ou are entitled to go to your local Housing Board of Review in Burlington to contest this decision." However, respondent's letter did not provide the deadline for requesting a hearing before this Board.

6. Petitioners disputed the withholding of their deposit; in addition, they alleged that the deposit was willfully withheld and requested double damages. The basis of petitioners' request for double damages is that they believe the lease was amended on August 29, 2021 so that it terminated on October 29, 2021. Consequently, petitioners argue that the withholding of the deposit was willful. According to petitioners, respondent agreed to amend the lease with the new termination date so that they would no longer be responsible for rent. Petitioners argued that early termination benefitted respondent because she would be able to control who the next group of tenants in the apartment would be. Petitioners also argued that respondent's communications with respect to re-renting the apartment and the request for compensation for her time to find new tenants for the unit evidence the willful withholding of the deposit. Respondent disputed that there was any agreement to end the lease early. Respondent denied the withholding of the deposit was willful and claimed petitioners mischaracterized the situation and their communications. With respect to the notice of the tenants' appeal rights, respondent was unaware of the need to include the 30-day deadline in the statement.

7. On August 29, 2021, petitioner Laura Mistretta and respondent talked on the phone about Laura Mistretta and Adam Noel leaving the rental unit and terminating the lease early.¹ The parties dispute the result of that conversation: Laura Mistretta testified respondent agreed to amend the lease while respondent testified she told Ms. Mistretta she would think about it. The communications (texts and emails) between respondent and petitioners evidence a lack of agreement between the parties. While Laura Mistretta's communications show her belief that the lease was terminating at the end of October, respondent's communications indicate her position that the lease was not amended and petitioners were responsible for rent until she found new tenants for the rental unit. When Laura Mistretta asked for written confirmation of what she believed was the new termination date, respondent replied that she had not agreed to amend the lease. Respondent's communications also include a request for compensation for her time looking for new tenants. Although it appeared there might be a new group of tenants for the unit beginning in November, on October 30, 2021, that group of tenants informed respondent they would not be taking the unit. Consequently, no rent was paid for the month of November, 2021.

8. Interest was not credited to the deposit.

Conclusions of Law

9. 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.

10. 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

¹ When the lease was renewed in June 2021, Richard Powell informed respondent he was looking for a new place to live and he would find a replacement tenant when he found a new place to live.

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.

11. 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 is 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).

12. 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 within 30 days; and the statement must be hand-delivered or sent by certified mail.² *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. The Board concludes respondent’s

²An amendment to Sec. 18-120(c) removing the “certified mail” requirement took effect on January 7, 2015.

notice of withholding to petitioner's was not proper as it did not contain the 30-day deadline for appealing. Therefore, the Board concludes respondent forfeited the deposit.

13. If the failure to return a security deposit with a statement within 14 days is willful, a landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(b)(e). Petitioners also moved for double damages, alleging respondent's failure to return their security deposit was willful. As the Superior Court has recently held, "willfully" for purposes of the ordinances can mean violating the ordinance by design, by intention, by being obstinate or indifferent to the requirements of the law. *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Sup. Ct. Feb. 4, 2020). Despite petitioners' arguments, the Board concludes the deposit was not willfully withheld. Respondent's statement of withholding to petitioners noted their right to appeal, but failed to include the 30-day deadline because she was unaware that it was required. While respondent got the notice wrong her error was not intentional.

14. 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.

15. The Board expresses no opinion about the availability of relief in other legal venues.

Order

Accordingly, it is hereby ORDERED:

16. Petitioners Laura Mistretta, Richard Powell and Adam Noel are entitled to recover from respondent Maea Brandt the following amounts:

a) \$2,175.00 of the principal amount of the security deposit improperly withheld after November 13, 2021;

b) Interest in the amount of \$26.69 on the entire deposit for the period June 1, 2019 to November 13, 2021; and

c) Additional interest of \$0.03 per day from November 14, 2021 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 19th day January, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Hearing Officer

/s/ Charlie Gliserman
Charlie Gliserman
Hearing Officer