



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 9/4/18

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Board Chair

cc: Nicholas Bilancieri (for all tenants)
Soon Kwon

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

In re: Request for Hearing of NICHOLAS)
BILANCIERI, JAMES MOONEY, DAVID)
RUSH, EMILY JOHNSTON and RACHEL) CITY OF BURLINGTON
HENNESSY Regarding Withholding of) HOUSING BOARD OF REVIEW
Security Deposit by SOON KWON for)
Rental Unit at 68 South Union St, #4)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on August 6, 2018. Board Chair Ben Traverse presided. Board Members Josh O’Hara, Patrick Kearney and Patrick Murphy were also present. Petitioners Nicholas Bilancieri, Emily Johnston and James Mooney were present and testified. Respondent Soon Kwon was also present and testified. Appearing and testifying as a witness was Patricia Wehman, Code Enforcement Case Manager.

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 Soon Kwon is the owner of a rental unit, 68 South Union Street, #4, in the City of Burlington which is the subject of these proceedings.
2. Petitioners Nicholas Bilancieri, James Mooney, David Rush, Emily Johnston and Rachel Hennessy moved into the rental unit with a lease which ran from June 1, 2017 to May 28, 2018. Monthly rent was \$3750.00.
3. Petitioners paid a security deposit of \$3375.00 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 apartment on May 27, 2018 and left their forwarding addresses on the kitchen counter for respondent. James Mooney temporarily left some belongings in the apartment with respondent’s permission.

5. On June 8, 2018, when James Mooney and another tenant returned to the unit to retrieve Mr. Mooney's belongings, they discovered, by chance, a written statement left on a counter, dated June 12, 2018, informing petitioners of alleged damages to the unit that totaled beyond the value of their deposit. The statement was addressed to petitioners at the address of the rental unit. Petitioners never received back any portion of their deposit.

6. Respondent testified he believed his wife also sent the statement by certified mail, but he was unable to produce a certified mail receipt and the petitioners otherwise testified that they never received the statement in the mail. The Board credits the testimony of the petitioners and finds that the respondent never mailed the withholding statement to the petitioners.

7. Respondent's statement did not inform petitioners of their right to request a hearing before this Board to dispute the withholding of their deposit. Rather, respondent's letter stated, "[i]f you do not agree with this account, please call me at [respondent's phone number] for a resolution or file a claim at the Small Claims Court, Vermont Superior Court, Burlington, Vermont."

8. For purposes of the return of any money to petitioners, Nicholas Bilancieri was designated as the tenant to whom any money should be returned; he would then be responsible for distributing money to the other tenants accordingly.

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 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. 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; and the statement must be hand-delivered or sent by mail. *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 both failing to hand-deliver or mail the statement to petitioners, and failing to include petitioners' appeal rights in the statement. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

13. Furthermore, both city ordinance and state law provide that if the failure to return a security deposit with a statement within 14 days is "willful," the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e).

14. Petitioners requested that the Board order respondent to pay double the amount of the deposit withheld arguing that his failure to return the deposit was willful. The Board acknowledges that when it questioned the petitioners regarding their claim for double damages, they did not point to evidence establishing that the respondent had clearly falsified damages or otherwise acted in bad faith in

withholding the entirety of their security deposit. The petitioners were unaware, though, of the full extent of respondent's long public history of flaunting the city's minimum housing ordinances.

15. This history culminated in 2011, when the Vermont Supreme Court weighed-in on the above-cited matter of *In re Soon Kwon*, 189 Vt 598 (2011). There, just as here, the Board concluded that the respondent had failed to mail sufficient notice to forwarding addresses provided by the tenants. The Board's decision was ultimately appealed to Vermont's highest court where, in no uncertain terms, the Supreme Court stated the following:

¶ 15. We reject the landlord's argument in this case. The security deposit section of the Landlord and Tenant Act is clearly a consumer protection provision regulating contractual security deposit procedures, and the City of Burlington has added to it additional procedures. The primary obligation of the landlord is to return the deposit, net of any deduction for damage to the premises or for unpaid rent. Accompanying the payment, if any, must be an itemization of any deductions and a notice that the tenant can appeal to the Housing Board of Review. Burlington Code of Ordinances § 18-120(c).

¶ 16. The method of delivery is explicit in the statute: "The landlord shall comply with this section by hand-delivering or mailing the statement and any payment required to the last known address of the tenant." 9 V.S.A. § 4461(d) (emphasis added). The ordinance adds that the statement and payment must be hand-delivered or sent by certified¹ mail and states that the last-known address of the tenant may be the address of the rental unit if no forwarding address is given. Burlington Code of Ordinances § 18-120(c).

Id., 189 Vt. at 602.

16. At the hearing on the instant matter, the Board asked the respondent about the clear standards set forth by the Supreme Court. The respondent acknowledged that he was previously advised of the decision by his previous legal counsel. The respondent further testified, however, that he disagreed with the decision. Per the respondent, there are "first-year law students" who could have written a better decision. In disagreement with the decision, the respondent still follows state law, but admits to not paying attention to city ordinances. In other words, among the reasons why the respondent did not

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

provide thirty days' notice of the petitioners' right to appeal to this Board is his personal, unfounded belief that city ordinances need not be followed.

17. When a landlord fully understands his obligations under the law and still fails to follow through, a wrongful security deposit withholding may be deemed "willful." See *In re Chase*, 186 Vt. 355 (willful generally connotes intentionally or by design). The Board is hard-pressed to think of any landlord who should be more aware of the law's requirements than the respondent. Notwithstanding this knowledge, the respondent failed to even mail a notice of withholding to the petitioners, let alone provide them notice of their right to appeal to this Board. Instead, in an apparent attempt to subvert this Board's authority, the respondent encouraged the petitioners to settle any disputes with him directly or, in the alternative, proceed to Small Claims Court.² Under these circumstances, the Board determines the respondent's withholding of the petitioners' deposit was willful and that the respondent owes the petitioners double the amount wrongfully withheld.

ORDER

Accordingly, it is hereby ORDERED:

18. Petitioner Nick Bilancieri (on behalf of all the tenants) is entitled to recover from the respondent Soon Kwon the following amounts:

a) \$3391.88, the principal amount of the security deposit plus interest, improperly withheld after the petitioners vacated the rental unit;

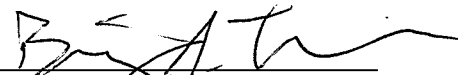
b) \$3375.00, double the amount withheld for the respondent's willful failure to return the deposit; and

² One of the essential benefits of this Board is that it provides tenants a fee-free forum to resolve their disputes. In order to proceed before the Small Claims Court, the petitioners would have been required to pay a \$90.00 filing fee. 32 V.S.A. § 1431(c)(1).

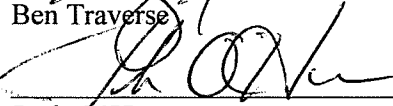
c) Additional interest of \$.05 per day from the date the petitioners vacated the rental unit until such date as the amount improperly withheld is returned to petitioner.

Dated at Burlington, Vermont this 4th of September, 2018.


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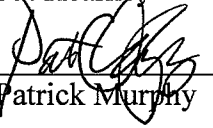
Ben Traverse



Josh O'Hara



Pat Kearney



Patrick Murphy