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CIVIL DIVISION
Case No. 25-CV-5170

Burchfield Management Company, LLC v. City of Burlington Housing Board of Review, et al.

DECISION ON HOUSING BOARD CROSS-APPEALS AND PENDING MOTIONS

This case involves cross-appeals from a decision by the Burlington Housing Board of Review about a security deposit. The property manager, Appellant Burchfield Management Company, LLC (“Burchfield”), appeals the Board’s order to return double the amount of the deposit. The tenants, Appellees/Cross-Appellants Jacquelyn Burrell and Isaac Bendavid (“Tenants”), appeal the Board’s denial of their request for attorney’s fees.

Burchfield also moves to dismiss the City of Burlington and strike its brief from this appeal (Mot. 3) and to restyle the caption reflecting that dismissal (Mot. 2). Tenants seek sanctions against Burchfield for bringing the motions to dismiss and to restyle the caption (Mot. 4). All parties have counsel.

For the reasons that follow, the court denies Mots. 2, 3 and 4, reverses the Board’s decision regarding Tenants’ attorney’s fees and otherwise affirms.

I. Background

Tenants rented an apartment at 166 Battery Street from February 1, 2022 through May 31, 2025. They paid a security deposit of \$2,150.00. Burchfield served as property manager on behalf of the owner, Pirate Yeti, LLC.

Following the end of the lease, Burchfield sent Tenants a notice of withholding on June 13, 2025. The estimated (not final) cost listed in the notice was \$8,900. The notice identified deductions from the security deposit in the full amount of the deposit and stated: “We will present you an invoice for the damage due to breach and harm, minus the \$2,150.00 deposit and provide you with a reasonable period to pay it. This will probably be by end of July, perhaps sooner, as the work is completed.” Housing Board Dec. ¶ 22. The withholding notice included 54 pages of photos, but did not include an itemized list of the charges or a statement of Tenants’ right to appeal before the Housing Board of Review.

Tenants appealed to the Board, disputing the reasonableness of the amounts withheld from their security deposit. They also contended that the withholding was willful and sought double damages and attorney’s fees.

On September 8, 2025, Burchfield sent a check to Appellants in the amount of \$2,150.00, the amount of the original deposit. The check did not include interest. Tenants confirmed that the check had been tendered but not cashed.

The Board held a hearing on September 22, 2025. The Board took evidence, including testimony from the parties. Noting that it was undisputed that the notice of withholding was lacking the statement required by B.C.O. § 18-120(c) advising Tenants of their appeal rights, the Board concluded that Burchfield “was not eligible to deduct any amount from the security deposit. . . .” Housing Board Dec. ¶¶ 49, 63. The Board found that the withholding was willful because it found not credible the testimony of Burchfield witnesses that they did not know of their requirement to notify Tenants of their right to appear before the Board. *Id.* ¶ 69. The Board further concluded that interest was also wrongfully withheld. *Id.* ¶ 70. The Board denied Tenants’ request for attorney’s fees, however, because “no measure of fees or costs was put into evidence, and accordingly, [Burchfield] was not given an opportunity to respond.” *Id.* ¶ 71. The Board elaborated that “there is no procedure for post-hearing motion practice” and therefore “[s]ome evidence should have been brought to the Board’s attention prior to the close of the hearing to provide a lodestar as a basis for an award.” *Id.*

II. Burchfield’s Motion to Dismiss/Restyle Caption

Burchfield seeks to dismiss the City of Burlington and strike its brief from this appeal, and to restyle the caption reflecting that dismissal. Burchfield contends that the City lacks “standing,” is not a real party in interest and may not appear as a party in this appeal. It analogizes the City’s participation in this appeal to a trial court appearing as a party before the Vermont Supreme Court. Appellant’s Mot. to Dismiss at 3.

Burchfield raises this claim even though it, as appellant, invoked this court’s jurisdiction in this appeal against the Board. In disputes over standing, “[t]he party focused upon . . . is almost invariably the plaintiff” and “ordinarily the role of defendants is considered only in determining whether they have caused the injury complained of and whether an order directed to them will redress that injury.” Wright & Miller, 13A Fed. Prac. & Proc. Juris. § 3531 (3d ed.). And this is not a case where a defendant’s standing might ordinarily be considered, for example, where a defendant has raised a counterclaim, affirmative defense, or an objection to a settlement between a plaintiff and a different defendant in a class action. See *id.* This case does not even involve a “defendant” in an original action, but an appellee in an appeal from a municipal hearing.

The cases Burchfield cites all involved plaintiffs or sovereigns seeking to invoke a court’s jurisdiction to litigate generalized grievances. See *Chase v. State*, 2008 VT 107, ¶ 11, 184 Vt. 430; *United States v. Texas*, 599 U.S. 670, 677 (2023); *Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923) (“*The party who invokes the power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury*”) (emphasis added).

Moreover, the City of Burlington has appeared on behalf of the Burlington Housing Board of Review in appeals before this court and the Supreme court. See, e.g., *In re Soon Kwon*,

2011 VT 26; *71 Drew LLC v. Burlington Housing Bd. of Review*, No. 25-CV-247, 2025 WL 2510528 (Vt. Super. Ct. Aug. 25, 2025) (Shafritz, J.); *South River, LLC v. Burlington Housing Bd. of Review*, No. 25-CV-3481, 2026 WL 374677 (Vt. Super. Ct. Feb. 03, 2026) (Shafritz, J.).

The City and/or the Board certainly has an interest in the appeal of the decision below, and its briefing is helpful in clarifying the issues. Even if the court were to dismiss the City and strike its briefing, Tenants have fully briefed the issues. The outcome of this appeal would be the same.

Burchfield further argues that, apart from standing, the City should also be dismissed because its participation “raises serious due process issues.” Mot. to Dismiss at 5. The court discusses these claims below, finding them unpersuasive.

The court denies the motion to dismiss (Mot. 3), mooted Burchfield’s requests to strike the City’s briefing or restyle the caption.

III. Tenants’ Motion for Sanctions

Tenants seek sanctions against Burchfield on the grounds that Burchfield’s motion to dismiss and motion to restyle the caption are frivolous. “Under Rule 11, any document submitted to the court is certified to present allegations supported by evidence and legal contentions warranted by law.” *Zorn v. Smith*, 2011 VT 10, ¶ 14, 189 Vt. 219 (citing V.R.C.P. 11(b)(2), (3)). “Upon belief that these requirements have been violated, the court may issue an order describing the specific conduct in question and direct a party to show cause why no violation should be found.” *Id.* (citing V.R.C.P. 11(c)(1)(B)). “After considering the party’s response, the court may impose a sanction that is ‘limited to what is sufficient to deter repetition of such conduct.’” *Id.* (quoting V.R.C.P. 11(c)(2)). “The trial court has broad discretion in determining if Rule 11 sanctions are warranted” *Purdy v. Bandler*, No. 2021-100, 2021 WL 5413207, at *1 (Vt. Nov. 19, 2021) (unpub. mem.) (citing *State v. Delaney*, 157 Vt. 247, 256 (1991)).

This court concludes that Burchfield’s unusual argument does not rise to the level of frivolous, harassing, or vexatious conduct that would warrant sanctions under Rule 11. See, e.g., *Zorn*, 2011 VT 10, ¶ 15; *Fox v. Fox*, 2022 VT 27, ¶¶ 36-41, 216 Vt. 460; see also *Delaney*, 157 Vt. at 256 (“Sanctions are not likely to be imposed, however, on a matter of first impression, even if there is contrary authority in other courts, or when the law is not clear.”) (quoting 5A C. Wright & A. Miller, *Federal Practice and Procedure* § 1335, at 69 (2d ed. 1990)). The court denies the motion for sanctions.

IV. Merits of Burchfield’s Appeal

Appeals from decisions of the Housing Board of Review under 24 V.S.A. § 5006 are governed by V.R.C.P. 74. *In re Soon Kwon*, 2011 VT 26, ¶ 6, 189 Vt. 598 (mem.). The court reviews the decision of the Board “on the record” rather than by conducting a new hearing. *Id.* (citing *State Dep’t of Taxes v. Tri-State Indus. Laundries, Inc.*, 138 Vt. 292, 294-95 (1980)). Unless the court determines that it must take evidence or appoint a referee for proper disposition of the matter, the court reviews the record of the hearing and exhibits acted upon by the Board.

See 24 V.S.A. § 5006(b); V.R.C.P. 74(d). “In such cases, the court’s task is solely to determine whether there was ‘any reasonable basis for the [Board’s] finding[s].’” *In re Soon Kwon*, 2011 VT 26, ¶ 6, 189 Vt. 598 (quoting *Tri-State Indus. Laundries, Inc.*, 138 Vt. at 294). The court does not “reweigh the evidence or assess the credibility of witnesses” because that is the province of the Board as the trier of fact. *Sweet v. Pierre*, 2018 VT 122, ¶ 13, 209 Vt. 1 (citing *Mullin v. Phelps*, 162 Vt. 250, 261 (1994)).

“A security deposit is any advance, deposit, or prepaid rent, however named, which is refundable to the tenant at the termination or expiration of the tenancy. The function of a security deposit is to secure the performance of a tenant’s obligations to pay rent and to maintain a dwelling unit.” 9 V.S.A. § 4461(a). A landlord “may retain all or a portion of [a] security deposit for . . . damage to property of the landlord, unless the damage is the result of normal wear and tear or the result of actions or events beyond the control of the tenant.” *Id.* § 4461(b)(2); see also Burlington Code of Ordinances § 18-120.

“A landlord shall return the security deposit along with a written statement itemizing any deductions to a tenant within 14 days from . . . the date the tenant vacated the dwelling unit” 9 V.S.A. § 4461(c). “If a landlord fails to return the security deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. If the failure is willful, the landlord shall be liable for double the amount wrongfully withheld, plus reasonable attorney’s fees and costs.” *Id.* § 4461(e).

Additionally, a “town or municipality may adopt an ordinance governing security deposits on dwellings,” which “shall be supplemental to and not inconsistent with the minimum protections of the provisions of this section.” *Id.* § 4461(g). Such an ordinance “may authorize the payment of interest on a security deposit” and “may provide that a housing board of review constituted pursuant to 24 V.S.A. § 5005 may hear and decide disputes related to security deposits upon request for a hearing by a landlord or tenant.” A board’s actions “shall be reviewable under 24 V.S.A. § 5006.” *Id.*

Burlington Code of Ordinances § 18-120(c) provides that the “written statement [that itemizes deductions] shall also inform the tenant of the opportunity to request a hearing before the Burlington housing board of review within thirty (30) days of receipt of the landlord’s written statement.” *Id.* § 120(c). The ordinance further provides: “If the failure to return the security deposit with a statement within fourteen (14) days is determined by the board to have been willful, the landlord shall be liable for double the amount wrongfully withheld.” *Id.*

A. Willfulness

Burchfield raises several points on appeal. First, it contends that the Board failed to use the proper standard in determining “willfulness.” Burchfield’s Appellant’s Br. at 5-6. Neither the statute nor the ordinance defines “willful.” The Board wrote that “‘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.” Board Dec. ¶ 68 (citing *Harrington v. McCauley*, 1095-12-19 Cncv, slip op. at 1-2 (Vt. Super. Ct. Feb. 4, 2020) (Toor, J.)). Burchfield argues that including the “obstinate or indifferent” language unlawfully broadened the definition. It asserts

that the “Board’s own findings demonstrate that it applied” the “obstinate or indifferent” standard, that its findings “do[] not establish intentional conduct” under Vermont case law, and that its reasoning improperly “equates awareness of a legal obligation with a purposeful intent to violate it.” Burchfield’s Reply at 3.

“Intent is rarely proved by direct evidence; it must be inferred from a person’s acts and proved by circumstantial evidence.” *State v. Cole*, 150 Vt. 453, 456 (1988); see also, e.g., *Immich v. Dept. of Corrections*, No. 25-CV-04003, 2026 WL 1233923, at *3 n.2 (Vt. Super. Ct. Apr. 21, 2026) (Shafritz, J.); *Manning v. Pallito*, No. 404-8-15 WRCV, 2016 WL 9453680, at *2 (Vt. Super. Ct. May 23, 2016) (Teachout, J.). Here, the Board found that the withholding was willful because it “did not find the testimony of Mr. Shlansky or Ms. Allen credible that they were unaware of their responsibility to notify tenants of their right to appear before the Housing Board” Board Dec. ¶ 69.

The Board acted within its discretion in making these credibility determinations. It looked at Mr. Shlansky’s “demeanor, his familiarity with the state statute, and the fact that he has been in property management for [25] years and been involved with hundreds of leases.” *Id.* ¶ 51. The Board stated that it “does not find it credible that Ms. Allen can have been in property management for years under two different companies, known of the requirement to submit a notice of withholding within fourteen days, and be familiar enough with Burlington Code of Ordinances Chapter 18 to cite it, and still be unaware of the requirement to notify tenants of their right to appeal before the Housing Board of Review.” *Id.* ¶ 55. Under the standards applicable to this appeal, the Board had reasonable bases for these findings that this court may not reassess. See § IV above (citing authorities).

The outcome of the Board’s willfulness finding aligns with the vast majority of Vermont case law. This court has found only limited instances where the Vermont Supreme Court (“VSC”) has discussed willfulness in the context of civil liability.

A wilful or intentional injury implies positive and aggressive conduct, and not the mere negligent omission of duty. Wilful means intentional and is used in contradistinction to ‘accidental’ or ‘unavoidable.’ A wilful act implies an intention to cause injury. In its customary usage, intentionally means an act done with intention of purpose, designed and voluntary.

Wendell v. Union Mut. Fire Ins. Co., 123 Vt. 294, 297 (1963) (citations omitted). The VSC followed that definition in only one § 4461 case this court has found where “the evidence show[ed] that landlords fully understood their obligation under the statute and simply failed to follow through.” *Tepper v. Garcia*, No. 2015-150, 2015 WL 5793116, at *4 (Vt. Sept. 30, 2015) (unpub. mem.). See also *Washburn v. Fowlkes*, Docket No. 2015-089, 2015 WL 4771613, at *3 (Vt. Aug. 2015) (citing V.R.A.P. 33.1(d), which provides that an “unpublished decision by a three-justice panel may be cited as persuasive authority but is not controlling precedent,” except under limited circumstances). The *Tepper* court “found that landlords were well aware that tenant had vacated the unit on August 18, 2014, but failed to send the required withholding notice until September 18, 2014.” *Tepper*, 2015 WL 5793116, at *2.

The superior court has addressed willfulness more frequently and consistently under § 4461. Those decisions overwhelmingly follow the VSC’s approach in *Tepper* and *Wendell*. E.g., *Burdo v. Handy’s Hotels & Rentals, LLC*, No. 26-CV-02223, 2026 WL 2019524, at *2 (Vt. Super. June 29, 2026) (Shafritz, J.) (“The Court agrees that § 4461(e) does not apply to mere accidents or excusable neglect. However, ‘willful’ involves intentional conduct but does not necessarily implicate the level of malice that [landlord] wants it to require.”); *id.* at *3 (“There was nothing accidental or excusably neglectful about [landlord’s] sending the letter and refund more than 14 days after [tenant] vacated the apartment, nor was it an accident that [landlord] withheld the equivalent of a half month’s rent.”); *George’s Way LLC v. Harrington*, No. 25-CV-02569, 2025 WL 2899379, at *3 (Vt. Super. Ct. Aug. 21, 2025) (Richardson, J.) (“In this respect, ‘willful’ means intentional and by design as opposed to accidental.”); *id.* at *1 (“Landlord’[s] defense is effectively a claim of ignorance as to the strict compliance requirement. This defense, however, has long been held to be no defense or excuse.”); *Atwood v. Hill*, No. 24-CV-01091, 2024 WL 4583268 (Vt. Super. Ct. Sep. 05, 2024) (Burke, J.) (“In other words, willful ‘means an act done with intention of purpose, designed and voluntary.’”) (citation omitted); *Grande v. JRLJ, LLC*, No. 253-4-08, 2008 WL 11592926, at *4 (Vt. Super. Ct. Aug. 08, 2008) (Teachout, J.) (“The standard legal definition of ‘willful’ is an act that is ‘voluntary and intentional, but not necessarily malicious.’”) (citation omitted); *Jones v. Coughlin*, No. 519-8-04 Rdcv, 2006 WL 4959629 (Vt. Super. Feb. 02, 2006) (Norton, J.) (“Plaintiffs paid a \$70.00 security deposit which was never returned or accounted for. The evidence indicates that this failure was willful, and therefore supports an award of double the deposit amount, or \$140.00, pursuant to 9 V.S.A. § 4461(e).”) (citing *State v. Gadreault*, 171 Vt. 534, 537 (2000) for proposition that a willful act is one that is deliberate and voluntary)).

The Board followed an unpublished decision in *Harrington* that used different language than the decisions cited above. Board Dec. ¶ 68. The outcome of the Board’s decision nevertheless aligned with the majority of case law. This court finds no legal error.

B. Wrong Party

Second, Burchfield contends that this action involves the wrong party because it names the property manager (Burchfield) rather than the property owner (Pirate Yeti, LLC), Burchfield never held the security deposit and the owner never received notice of the Board hearing.

The notice of withholding was sent by Burchfield, on Burfield letterhead. Ex. 13. On September 8, 2025, Burchfield sent a check to Tenants in the amount of the original deposit. See Board. Dec. ¶ 39. Furthermore, Burchfield and its contact information are identified at the top of the lease and its address is the address for notice in the lease. Ex. 4. These facts undermine Burchfield’s suggestion that it never held Tenants’ security deposit.

In addition, Burchfield’s representative, Mr. Shlansky, is also Pirate Yeti’s agent for service of process registered at Burchfield’s address. Pirate Yeti’s principal is North River, LLC, which also shares an address with Burchfield and of which Mr. Shlansky is one of two members. Board Dec. ¶ 57. Mr. Shlansky testified at the Board hearing, albeit without credibility in the Board’s view.

The court does not agree that Burchfield is the wrong party under these circumstances.

C. Advisory Opinion/Dicta

Next, Burchfield argues that much of the Board’s decision constituted an “impermissible advisory opinion” and “ultra vires dicta” by “making extensive findings that are unrelated to the issue at hand.” Burchfield’s Appellant Br. at 8. It accuses the Board of “purport[ing] to block addressing of the civilly-actionable damage . . . through a proper civil action . . . that it knows is foreseeable [and] by definition outside of its limited scope.” *Id.* It asks the court to strike that portion of the Board’s decision. *Id.* at 9.

Burchfield appears to challenge the portion of the Board’s decision stating that it “seriously doubts the legitimacy of many of [Burchfield’s] deductions as being legitimate deductions for normal wear and tear,” as well as the Board’s impression of the alleged floor damage and lost rental days. See Board Dec. ¶¶ 64-66. The court does not reach this assertion. As the Board noted, no party disputed that the required notice was not provided and Burchfield was not entitled to deduct any amount from the security deposit. Board Dec. ¶ 63.

D. Due Process/Confrontation of Witnesses

Fourth, Burchfield argues that the Board violated the “mandatory minimum process” required by its own rules and standards. Burchfield’s Appellant Br. at 9. It complains that the Board did not allow cross-examination and did not follow any formal evidentiary process, and that this approach conflicts with “basic due process rules in a contested hearing” and the City’s ordinance providing that “[t]he parties shall have the right to . . . confront witnesses.” *Id.* (citing Burlington Code of Ordinances § 18-55).

While the ordinance grants the parties the right to “confront witnesses,” the Board’s process here was adequate. This is not a criminal trial where formal cross-examination is constitutionally required. Importantly, “an opportunity for formal cross-examination is not always required to satisfy due process. The formality and procedural requirements of the hearing vary depending on the interests at stake. Nonetheless, there must be a meaningful opportunity to counter the allegations by argument, and if necessary, by proof, however informal.” *Stone v. Town of Irasburg*, 2014 VT 43, ¶ 36 n.3, 196 Vt. 356 (quotation omitted); *In re Soon Kwon*, 2011 VT 26, ¶ 8, 189 Vt. 598 (holding that administrative hearings “need not meet the exacting requirements of judicial proceedings”). Burchfield had an adequate opportunity to present its position. Mr. Shlansky appeared on behalf of Burchfield, argued, objected to the Board’s authority, testified, disputed Tenants’ factual account, introduced photographs and invoices, and explained why he thought the withholding was justified.

The court sees no prejudice under these circumstances. Burchfield identifies no specific questioning it would have raised on cross-examination that would have shown that the withholding notice was compliant, undermined the Board’s credibility determinations, or otherwise changed the outcome. The absence of formal cross-examination does not provide grounds for reversal.

E. Structural Defect/Bias

Fifth, Burchfield alleges a “structural defect” involving due process and bias. Essentially, it argues that the Board and the City Attorney’s office “form a single governmental body that is adjudicating issues in which they have an agenda,” that the City Attorney’s office is “actively participating and examining witnesses as if it were a party to the case” and is biased against landlords. Burchfield’s Appellant Br. at 10-11. Burchfield’s argument seems to challenge that representatives of the City Attorney’s office participated in the hearing and advised the Board members.

“Due process requires a fair hearing before an unbiased decisionmaker, both in courts and administrative agencies” and “[t]he presence of bias—or prejudgment, a form of bias—may preclude a fair and impartial hearing.” *In re Grismore*, 2024 VT 70, ¶ 17, 220 Vt. 202 (citation and quotation omitted). “In administrative proceedings, decisionmakers enjoy “a presumption of honesty and integrity, and only in the most extreme of cases is disqualification for bias constitutionally required.” *Id.* (citation and quotations omitted); see, e.g., *In re JLD Props. of St. Albans, LLC*, 2011 VT 87, ¶ 9, 190 Vt. 259 (quotation omitted) (holding disqualification required when board chair “expressed open contempt for the group as outsiders and elitists, implying that they were illegitimate participants in the proceedings before the board”). The party claiming bias has the burden to overcome this presumption. *Sec’y, Agency of Nat. Res. v. Upper Valley Reg’l Landfill Corp.*, 167 Vt. 228, 235 (1997).

Burchfield presents no evidence of the “personal intermixing of roles that normally is a hallmark of a due process violation.” *In re Crushed Rock, Inc.*, 150 Vt. 613, 621–22 (1988). See, e.g., *Bruteyn v. State Dental Council & Exam. Bd.*, 380 A.2d 497, 499, 501–02 (Pa. Commw. Ct. 1977) (finding hearing was “unconstitutionally tainted” where prosecuting attorney also advised dental board “before, during, and after” hearing and took part in drafting final order, where board was unrepresented by independent counsel); *La Petite Auberge, Inc. v. Rhode Island Comm’n for Human Rights*, 419 A.2d 274, 285 (R.I. 1980) (requiring evidence that “same individuals are involved in the building of an adversary case”); *Burhoe v. Whaland*, 356 A.2d 658, 659 (N.H. 1976) (finding improper where same person investigated case, presented case, cross-examined witnesses, and decided case).

The hearing before the Board in this case involved a dispute between Burchfield and Tenants over a security deposit. The City Attorney’s office did not prosecute the case or otherwise represent one side in the hearing. The presence of counsel from the City Attorney’s office to support the Board’s apparently new Clerk, see City’s Opp’n at 10 (filed Apr. 30, 2026), does not demonstrate bias.

F. Dillon’s Rule

Sixth, Burchfield complains that the Board has improperly “adjudicate[ed] ultra vires [m]atters” and violated Dillon’s Rule. Burchfield’s Appellant Br. at 11. It argues that a housing board of review has the power to resolve security deposit disputes only “where a municipality so provides,” 24 V.S.A. § 5005(c)(1), and that Burlington’s ordinance is defective in that it does not

explicitly state that the Board has the power to decide security deposit disputes. See Burlington Code of Ordinances § 18-42.

According to Dillon’s Rule, “a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.” *City of Montpelier v. Barnett*, 2012 VT 32, ¶ 20, 191 Vt. 441 (citing *Hinesburg Sand & Gravel Co. v. Town of Hinesburg*, 135 Vt. 484, 486 (1977)). In practice, Dillon’s Rule “operates as a canon of construction requiring that grants of power to municipalities be read as limited to those clearly enumerated. *City of Montpelier v. Barnett*, 2012 VT 32, ¶ 20, 191 Vt. 441 (citing *Valcour v. Vill. of Morrisville*, 104 Vt. 119, 130 (1932)).

The Vermont legislature has expressly provided that municipalities may adopt ordinances regarding security deposit disputes for residential dwellings, plainly contemplating that housing boards of review may hear and decide such matters. 9 V.S.A. § 4461(g). The chapter of Title 24 that Burchfield cites “shall be construed most favorably to municipalities, its intention being to give them the fullest and most complete powers possible concerning the subject matter hereof.” 24 V.S.A. § 5009. Moreover, the VSC has also recognized that a “security-deposit hearing” in front of Burlington’s Board of Housing Review is “specifically authorized by [24 V.S.A.] § 5005(b)(5)” *In re Soon Kwon*, 2011 VT 26, ¶ 21, 189 Vt. 598. In hearing the security deposit dispute in this case, the Board did not exceed its powers authorized by the legislature.

G. Prior Return of Security Deposit

Lastly, Burchfield contends that the Board ordered the return of money that was already returned. The evidence below showed that Burchfield sent Tenants a check, but that Tenants had not yet cashed the check, presumably because they were also seeking double damages, interest, and attorney’s fees. The Board decided the total amount of Burchfield’s liability. It did not delineate the mechanism of payment or collection.

V. Tenants’ Cross-Appeal on Attorney’s Fees

In their cross-appeal, Tenants contend that the Board erred in denying their request for attorney’s fees. The Board had denied the request for fees because “no measure of fees or costs was put into evidence, and accordingly, [Burchfield] was not given an opportunity to respond.” Board Dec. ¶ 71. The Board explained that because this was not a court trial, “there is no procedure for post-hearing motion practice,” and therefore “[s]ome evidence should have been brought to [its] attention prior to the close of the hearing to provide a lodestar as a basis for an award.” *Id.*

Tenants rely on the statutory language providing for the recovery of attorney’s fees: “If the failure [to return the security deposit with a statement within 14 days] is willful, the landlord *shall be liable* for double the amount wrongfully withheld, *plus* reasonable attorney’s fees and costs.” *Id.* § 4461(e) (emphasis added). They contend that once the Board found willfulness, the award of attorney’s fees became mandatory.

Both Burchfield and the City oppose this argument. They note that the City’s “Notice of Hearing” provided in advance of the hearing stated that “the parties should be prepared to testify about all aspects of the case.” Notice of Hearing (filed Dec. 1, 2025). The Notice further provided that all evidence other than witness testimony must be submitted by a certain date prior to the hearing, and that “[o]nly properly submitted” evidence “will be considered by the Board in making its decision.” *Id.*

The court concludes that the Board erred in refusing to award attorney’s fees. The plain language of the statute makes fees mandatory when there is a finding of willfulness. The court finds no ambiguity in this statutory language. The hearing notice does not supersede the statute.

VI. Order

The court denies Mots. 2, 3 and 4. The court reverses the Board’s decision regarding Tenants’ attorney’s fees and otherwise affirms. The court would typically remand to the Board a determination of attorney’s fees, but the Board has already declared that it has “no procedure for post-hearing motion practice.” Board Dec. ¶ 71. This court does not regulate the Board’s procedures.

By Sep. 25, Tenants shall submit sufficient materials to support their request for attorney’s fees. Burchfield shall respond to Tenants’ filings by Oct. 9. Either party may request or stipulate to additional time with the opposing party by its respective deadline.

Electronically signed pursuant to V.R.E.F. 9(d) on September 10, 2026.


Colin Owyang
Superior Court Judge