

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 21, 2019

7:00 p.m.

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

AGENDA

1. Diane Dolliver (property owner) (code case) re: 122 Shelburne St
2. Christie Delphia (tenant); Code Enforcement Office (code case) re 603 Riverside Avenue [property owner: PBGC, LLC]
3. Shana Casava (tenant); Josephine Bove (landlord) (security deposit case) re: 90 Pearl St, Apt. 409
4. Brendan Grahm, Konner Sherman, Emilio Fornatora, Kaitlyn Beers (tenants); David Bauer/Full Circle Property Management (landlord) (security deposit case) re: 219 Plattsburgh Ave

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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 11/6/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Christie Delphia
William Ward
Patricia Wehman
Bill Bissonette

**In re: Request for Hearing of CHRISTIE)
DELPHIA Regarding the Rental) CITY OF BURLINGTON
Property at 603 Riverside Ave, #3) HOUSING BOARD OF REVIEW**

The above-named hearing came before the Housing Board of Review on October 21, 2019. Board Chair Josh O’Hara presided. Board Members Patrick Murphy and Olivia Pena were also present.¹ Petitioner Christie Delphia was present and testified. William Ward, Director of Permitting and Inspections; Patricia Wehman, Housing Manager for Permitting and Inspections; and Housing Inspectors Tim Ahonen and Ita Meno were also present and testified. Also appearing and testifying as witnesses were Robert E. Lee, III and Bill Bissonette.

FINDINGS OF FACT

- ¹ Betsy McGavisk recused herself from participating in the hearing.

4. On February 8, 2019, Housing Inspector Matthew Perry investigated a report received from the tenant of heat issues in the unit. The tenant complained about the lack of control over the heat setting and that the front door was not weather tight. The heat in petitioner's unit is controlled by a thermostat in a different unit in the building. Inspector Perry found the temperature in the unit to be about 68 degrees, and thus, in compliance with the Minimum Housing Code. Mr. Perry also found the weather stripping on the exterior front door to be absent or in disrepair. On February 20, 2019, Inspector Perry issued an Order requiring that weather stripping be repaired. A copy of the order was not sent to petitioner, but she was informed of Inspector Perry's findings and Order and told by William Ward in a telephone conversation that she could file an appeal of his findings.

5. On February 26, 2019, Housing Inspector Ita Meno visited the property and set up data loggers in unit 3 to monitor the heat. Petitioner believed the person controlling the heat was purposely setting the heat high to annoy her. The findings from the monitors indicated the maximum temperature in the living room was 76 degrees; the other monitor did not log any data. Petitioner was informed of the findings.

6. On March 21, 2019, the repairs to the weather stripping on the front door cited in the February 20 Order were completed. Permitting and Inspections was also informed that Bissonette Property Management was the new property manager for the property.

7. On April 11, 2019, the property was sold to PBGC, LLC.

8. On April 18, 2019, Housing Inspector Tim Ahonen conducted an inspection of unit 3 at the property as a result of a complaint. Inspector Ahonen found 4 violations in the unit and issued an Order. Petitioner was made aware of the violations cited in the Order. On May 17, 2019, Permitting and Inspections received notice from the property owner that when they went to the unit to make repairs, the tenant denied them access to the unit.

9. On June 17, 2019, Permitting and Inspections received 2 additional complaints from petitioner, as well as a communication from another city office in which petitioner complained about Permitting and Inspections' inaction about her complaints.

10. On June 19, 2019, Inspector Ahonen conducted a follow-up inspection of the property at which time the violations found on April 18 were checked. In addition, petitioner had new complaints. Inspector Ahonen issued an Order on June 27, 2019. A reinspection was scheduled for July 18, 2019.

11. On July 18, 2019, officials from Permitting and Inspections conducted a reinspection of the property; representatives for the property owner and petitioner were present. All violations previously cited had been repaired. When petitioner identified new issues the property owner's maintenance person addressed them.

12. On September 12, 2019, Permitting and Inspections closed all prior orders issued because all violations cited in them had been resolved by the property owner.

13. On September 11, 2019, Housing Inspector Tim Ahonen and Housing Manager Patricia Wehman conducted a new inspection of the property to address petitioner's complaints about hornets on the porch and an exterior porch window. Inspector Ahonen issued an Order dated September 17, 2019 requiring an exterminator address the hornets and requiring the porch window to be repaired; a reinspection was scheduled for October 8, 2019. The property owner subsequently provided documentation to Permitting and Inspections that an exterminator had been hired; the hornets were sprayed and removed.

14. On September 18, 2019, the Fire Marshall conducted an inspection of the property after receiving a report of dangerous front stairs leading to unit 3. The Fire Marshall informed William Ward that the stairs were compliant with the code requirements.

15. On October 3, 2019, William Ward received a complaint from petitioner about excessive heat in unit 3; petitioner's complaint also indicted the tenant in unit 5 had similar problems. In response to the complaint, Mr. Ward checked the units at 11:30 a.m. on October 3. However, unit 3 was unoccupied so Mr. Ward was unable to gain access to it. Mr. Ward was given access to unit 1 (which is below unit 3) by the tenants. Mr. Ward found the thermostat was set to 40 degrees while the actual temperature reading on the thermostat indicated 80 degrees. The property manager was aware of the problem and was sending a technician to check it. Later that day, the property manager told Mr. Ward the technician identified the

problem as being caused by a faulty thermostat in unit 1; a new thermostat was installed, the thermostat was set at 70 degrees and a locking mechanism was put on it.

16. On October 8, 2019, petitioner denied the Housing Inspector access to the unit for the follow up inspection related to the Order issued on September 17. Petitioner refused access to the unit because she stated the property owner did not provide proper notice of the inspection. On September 6, 2019, petitioner was provided with a copy of the September 17 Order noting the reinspection date through a public records request.

17. On October 9, 2019, petitioner emailed a complaint about the heat to the City Attorney's Office. In response to that complaint, William Ward went to the property to check the issue. There was no answer at unit 3, but the tenant in unit 1 allowed Mr. Ward access to their unit to check the temperature readings. The thermostats in the unit read 70 and 74 degrees. One of the thermostats had been installed after Mr. Ward's visit on October 3; the tenant in unit 1 reported the temperature had been much better since that visit.

18. On October 10, 2019 at 6:00 p.m., William Ward went to the property again after receiving an email about continuing heat issues marked, "*This is an emergency*," from petitioner. Mr. Ward took temperature readings with a handheld device. He got a reading of 84 degrees in unit 4; the kitchen thermostat in the unit was set on 90 degrees and displayed a temperature reading of 80 degrees. The thermostat was turned down to 70 degrees before Mr. Ward left. Mr. Ward then checked unit 3; petitioner was not at home, but her mother was home and allowed Mr. Ward access to the unit. Petitioner's mother indicated it was too warm in the apartment. The temperature reading in unit 3 was 83 degrees. Mr. Ward informed petitioner's mother that the thermostat in the unit below hers was just turned down so the temperature in her unit should go down.

19. On October 11, 2019, William Ward went to the property to check a report of overheating in unit 3 (petitioner's unit). Mr. Ward documented readings of 80 degrees in unit 3. Mr. Ward also checked the temperature in unit 4; the thermostat in that unit was set at 90 degrees and it was reading an air

temperature of 70 degrees. William Ward also went through unit 3 with petitioner to document her complaints:

- a. Holes in the floor where molding is missing
This is an area between the living room and the east side bedroom where there's a small step. The gap appeared to be the end of subfloor where it meets the step. William Ward found this was not a violation of the housing code.
- b. Spongy areas throughout the living room floor
Petitioner showed William Ward an area in the living room where the floor has slightly more movement when pressed downward into the carpet. There are no visible signs of any problems with the floor. Mr. Ward found no violation of the housing code.
- c. Living room floor slanted
Petitioner showed William Ward an area in the living room where the tenant believes the floor is slanted and constitutes a housing violation. Along the west wall of the living room there is a reptile enclosure with a water tray; the water in the tray is clearly not level. The enclosure sits along the edge of the carpet and may be on top of a carpet tack strip, and thus, sitting slightly higher on the other carpeted areas. However, the difference was not significant enough to be a tripping hazard. Additionally, Mr. Ward noted that the house was built in 1930 which may account for areas no longer being absolutely square. Mr. Ward found no violation of the housing code.
- d. Kitchen floor starting to split
Petitioner pointed out an area in the kitchen where 2 seams of rolled linoleum flooring met. The area had a very small crack in the caulking in the seam between 2 sections of 4 foot wide flooring. The crack was a few inches long, but only about 1/16th of an inch wide. William Ward determined there was no violation because the crack did not prevent the floor from being impervious to water.
- e. Closet wall ceiling held up with roofing nails
Petitioner pointed out a closet wall where 2 ceiling tiles were being held flush to the wall by 2 nails hammered into the adjacent wall; the nails stick out over an inch from the wall. William Ward found this condition to be a non-emergency violation as the repair to the ceiling tiles was not made in a workmanlike manner; Mr. Ward determined the deficiency should be repaired properly.
- f. Piece of missing trim on door frame
Petitioner pointed out a 3-inch gap between the door frame on the inside of a closet next to the kitchen and the adjacent sheetrock wall. There is also a gap above the door where the trim is missing. William Ward found the condition was a non-emergency violation which needed to be properly repaired.
- g. Door frame pulling away from the wall
Petitioner pointed out the inside of a closet adjacent to the kitchen where there was a seam visible between the door frame and the sheetrock wall. Petitioner reports the seam is expanding due to the building settling. There are no older photos of the seam so there is no way to determine if settling is occurring along the door frame. William Ward found no violation of the housing code.

- h. Door curtain not level
Petitioner pointed out a sliding accordion-style door in a closet adjacent to the kitchen. The door does not stay open completely when it is pulled to the fully open position. William Ward found no violation of the housing code.
- i. Closet floor surface spongy
Petitioner pointed out an empty closet in the north side of the apartment where the floor surface was soft and spongy, and there was a split in the center of the surface. The floor of the closet is covered with what appears to be wall-to-wall carpet padding which by its very nature is soft and spongy. William Ward determined the split in the surface was merely where 2 pieces of padding were joined. Mr. Ward found no violation of the housing code.
- j. Bathroom floor has a soft spot
Petitioner pointed out a spot on the bathroom floor that creaks when stepped on and that has slightly more movement when pressed downward. There is no evidence of damage to the flooring. William Ward pointed out that is not unusual for floors in older homes to have creaks. Mr. Ward determined there was no violation of the housing code.
- k. Roof cover over entry stairs
Petitioner pointed out the entry stairs from Riverside Avenue to the front door of the second floor which are covered by an asphalt shingled roof. Petitioner reported that there is a leak in the roof when it rains. William Ward did not observe any leaks in the roof. Photos of the roof taken by Mr. Ward indicate some missing shingles and shingles in disrepair. Mr. Ward offered to come back on a rainy day to check the roof.
- l. Crack in the wall of the front porch
Petitioner pointed out a seam in the wallboard on the west wall of the front porch of the entry to her unit; petitioner believed the seam was expanding as a result of the building settling. The crack in the seam of the wood is along the pattern line so William Ward was unable to determine whether or not there was a settling problem. Mr. Ward photographed the problem and planned to check the property again to see if there was any notable movement along the seam.
- m. Porch windows
Petitioner pointed out the front porch windows at the top of the entry stairs to her unit. There were wood shims on the window well that appear to have fallen out or been pulled out of the window frame. William Ward noted some small gaps between the metal window frame and the wood. Mr. Ward determined the condition was a non-emergency violation which needed to be repaired.

20. William Ward requested that the Board uphold the decisions of the minimum housing inspectors and require any new items found to be violations to be corrected within 30 days.

CONCLUSIONS OF LAW

21. The Board has the power to reverse or affirm, in whole or in part, any order or other action of the inspector and to make such order, requirement, decision or determination as ought to be made.

Minimum Housing Code, Sec. 18-42(d).

22. Petitioner appealed the Minimum Housing Orders dated February 20, 2019, June 18, 2019, June 27, 2019 and September 17, 2019, and the Housing Inspectors' findings at the reinspections on March 21, 2019 and July 18, 2019 that the property was in compliance with the orders issued by them. Section 18-48 of the Minimum Housing Code allows a party aggrieved by any action of an inspector to be appealed to this Board. A request must be made within 30 days of the action from which relief is sought. Minimum Housing Code, Sec. 18-49. Petitioner argued that her appeal with respect to some actions of the inspectors was not untimely because she did not receive documents in a timely manner. While written notice of the Housing Inspectors' findings would be useful to a tenant making a complaint, the Minimum Housing Code only requires an inspector to make a written record of the investigation's findings. Minimum Housing Code, sec. 18-24. Nonetheless, in this case, petitioner had notice of the violations and issuance of orders, and in fact, complained about the results of the orders issued by the Housing Inspectors. Therefore, the Board concludes that petitioner's appeal of the orders dated February 20, 2019, June 18, 2019 and June 27, 2019 are not timely. Similarly, petitioner's appeal related to the reinspections on March 21, 2019 and July 18, 2019 are not timely. Petitioner's appeals of these orders and reinspections are dismissed.

23. With respect to the Order dated September 17, 2019 that order was issued as a result of a complaint received by petitioner. The complaint was investigated and an order issued. The property owner provided documentation that one of the items cited in the order was resolved. The other item is still outstanding because petitioner refused entry to the unit by the housing inspector. The Board affirms the Order of September 17, 2019 and the actions of Permitting and Inspections.

24. On October 11, 2019, William Ward inspected the property and found 3 violations: closet wall ceiling held up with roofing nails (§19, item e); missing trim on a door frame (§19, item f); and porch windows (§19, item m). The Board affirms these findings as being violations of Sections 18-70 and 18-73 of the Minimum Housing Code.

25. With respect to the roof cover over the entry stairs (§19, item k), William Ward did not find a violation because he was unable to observe the roof leaking. However, testimony provided by petitioner and a photograph of the roof in question submitted by Mr. Ward indicate there are missing shingles and shingles in disrepair. The Board concludes this roof is in violation of Sec. 18-71 of the Minimum Housing Code requiring roofs to be structurally sound and tight, and not have defects which might admit rain.

26. With respect to the crack in the wall of the front porch (§19, item l), William Ward was unable to determine if the crack evidences a settling problem with the problem. Mr. Ward photographed the area and planned to check it again. The Board agrees with Mr. Ward's assessment and plan to check the property again to see if there is movement along the crack.

27. Section 18-86 of the Minimum Housing Code requires that every dwelling unit be provided with heating facilities capable of maintaining a room temperature of 65 degrees at a point 3 feet above the floor and 3 feet from an exterior wall in all habitable rooms and bathrooms at all times; in addition, the minimum capacity must be obtained without overheating any other room. Petitioner has repeatedly complained about heating issues in her unit which are continuing. When William Ward inspected the property on October 10, 2019, he found the temperature setting on the thermostat controlling petitioner's heat to be set at 90 degrees; he turned the thermostat down and informed petitioner's mother that the heat in her unit should go down. Given the continuing nature of the problem, the Board will order Permitting and Inspections to reinspect the unit with respect to the heating issues.

28. With respect to Williams Ward's other findings on October 11 (§19, items numbered a, b, c, d, g, h, i, and j), the Board affirms Mr. Ward's determination that these items are not violations of the Minimum Housing Code.

ORDER

Accordingly, it is hereby ORDERED:

29. The property owner, PBGC, LLC, shall repair, to the satisfaction of the Department of Permitting and Inspections, within 30 days of the Board's Order the following violations found at the property on October 11, 2019:

- a. Closet wall ceiling held up with roofing nails;
- b. Piece of missing trim on the door frame of the closet adjacent to the kitchen;
- c. Roof cover over the front entry stairs to unit 3; and
- d. Porch windows at the top of the entry stairs to unit 3.

30. Permitting and Inspections shall reinspect the unit within 30 days to determine whether or not the heating issues are resolved. Permitting and Inspections shall give written notice of their findings to petitioner within 7 days of their reinspection.

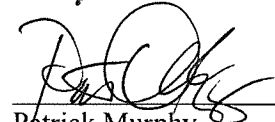
31. Permitting and Inspections shall reinspect the property within 60 days to determine if there has been movement along the crack in the seam of the wood on the front porch.

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

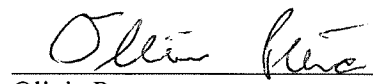
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara



Patrick Murphy



Olivia Pena



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

(802) 865-7122

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CITY OF BURLINGTON**

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DATED 11/6/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Diane Dolliver
William Ward
Tim Ahonen

**In re: Request for Hearing of DIANE)
DOLLIVER Regarding the Rental) CITY OF BURLINGTON
Property at 122 Shelburne Street) HOUSING BOARD OF REVIEW**

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

1. Petitioner Diane Dolliver is the owner of the rental property, 122 Shelburne Street, in the City of Burlington which is the subject of these proceedings.
2. On August 7, 2019, Minimum Housing Inspector Tim Ahonen conducted an inspection of the property and issued an order on September 5, 2019. In that Order, Mr. Ahonen noted 3 minimum housing violations at the property, including the lack of ventilation in the first floor bathroom.
3. On September 24, 2019, petitioner requested a variance from the code standard related to ventilation in the first floor bathroom. The other issues cited in the Order have been resolved.
4. Section 18-84(c) of the Minimum Housing Code requires every bathroom or toilet room to have one window opening to the outdoors or a fan or mechanical device vented to the outdoors to prevent the buildup of moisture.
5. The building was built in the early 1900's. The bathroom at issue is in the middle of the building on the first floor so that there is no window opening to the outdoors; in addition, there is no fan that provides ventilation to the bathroom. Petitioner's electrician reports that it is nearly impossible to

vent a fan to the outdoors because of obstacles (stairway, kitchen and chimney) on the north, east and south sides of the bathroom. Installing a fan would require building a 10-15 ft. soffit through the middle of the foyer and venting the fan on the front porch above the front door. Also, the exterior walls of the building are double brick.

6. Currently, there is only a sink and toilet in the bathroom and there is no evidence of a moisture problem. Code Enforcement does not object to granting a variance given the current state of the bathroom. However, they would like to be able to revisit the issue should moisture become a problem in the future.

CONCLUSIONS OF LAW

7. To grant petitioner a variance from the strict application of the Code, the Board must determine that:

by reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exception difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued....

Minimum Housing Code, Sec. 18-42(c). Petitioner has met this standard: it is not possible to add a window opening to the outdoors or to install a fan venting to the outdoors in the bathroom.

8. Once this standard is met, the Board's discretion to grant a variance is further circumscribed by another provision of Section 18-42(c):

[P]rovided, however, that the board shall have the power to vary from the strict application of the requirements of this chapter only to the least extent necessary to relieve the difficulties or hardships involved, and only if such variance will not cause substantial detriment to the health, safety, morals and general welfare of the persons residing in the dwelling units involved or to the general public and will not cause substantial impairment of the intent and purpose of this chapter....

The Board concludes that this standard has also been met at this time. There is no evidence of a moisture problem in the bathroom so granting a variance will not cause substantial detriment to the health, safety, morals or general welfare of the tenants residing in the unit.

ORDER

Accordingly, it is hereby ORDERED:

9. The request of petitioner Diane Dolliver for a variance from Section 18-42(c) of the Minimum Housing Code regarding ventilation in the first floor bathroom is hereby GRANTED subject to the following conditions:

a) To ensure that any subsequent purchaser of the property has notice that a variance has been granted, petitioner shall cause a copy of these Findings of Fact, Conclusions of Law, and Order to be recorded and indexed in the land records of the City of Burlington.

b) This variance does not preclude Code Enforcement from citing the bathroom in the future should there be signs of a moisture problem.

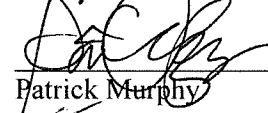
c) This variance is granted under the condition that the bathroom only have a sink and toilet in it. Should the bathroom be remodeled in the future, including but not limited to the installation of a shower or bathtub, this variance shall no longer be in effect.

Dated at Burlington, Vermont this 6th of November, 2019.

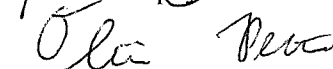
CITY OF BURLINGTON
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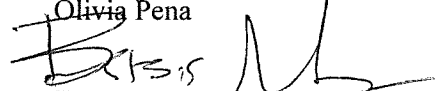
Josh O'Hara



Patrick Murphy



Olivia Pena



Betsy McGavisk

BURLINGTON HOUSING BOARD OF REVIEW

Monday, October 21, 2019

7:00 p.m.

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

Minutes

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

Staff present: Lisa Jones

1. Diane Dolliver (property owner) (code case) re: 122 Shelburne St
Present were: Diane Dolliver, Tim Ahonen, William Ward; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
2. Christie Delphia (tenant); Code Enforcement Office (code case) re 603 Riverside Avenue
[property owner: PBGC, LLC]
Board member Betsy McGavisk recused herself from the case.
Present were: William Ward, Patti Wehman, Tim Ahonen, Ita Meno, Robert E. Lee, III,
Bill Bissonette, Christie Delphia; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
3. Shana Casava (tenant); Josephine Bove (landlord) (security deposit case) re: 90 Pearl St,
Apt. 409
Hearing rescheduled
4. Brendan Grahm, Konner Sherman, Emilio Fornatora, Kaitlyn Beers (tenants); David
Bauer/Full Circle Property Management (landlord) (security deposit case) re: 219
Plattsburgh Ave
Hearing postponed at request of landlord