

BURLINGTON HOUSING BOARD OF REVIEW

Monday, September 30, 2019

7:00 p.m.

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

AGENDA

1. Chris Khamnei (property owner) (code case) re: 395 College St, 240 Pine St, 421 Main St and 233-235 St. Paul St
2. Cailin Gramling, Natalie Fuchs, Sarah Jacoby, Bryn Hickley, Ava Lavalee (tenants); Eric Winslow (landlord) (security deposit case) re: 39 So. Union St
3. Tim Heffernan, Arthur Conover, Ryan Darling (tenants); Stanley & Nancy Mikrut (landlord) (security deposit case) re: 42 Latham Ct
4. Tara Verstandig, Courtney Carr, Amanda Martinez, Caroline Robinson (tenants); Perry-Sargeant Properties LLC (landlord) (security deposit case) re: 21 Hyde St, Apt. 4

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.



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 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Chris Khamnei
William Ward
Matthew Perry

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

**In re: Request for Hearing of CHRIS KHAMNEI)
Regarding the Rental Property at 233-) CITY OF BURLINGTON
235 St. Paul Street) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Chris Khamnei was present and testified. Also appearing and testifying were William Ward, Director of Permitting and Inspections, and Minimum Housing Inspector Matthew Perry.

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. Petitioner Chris Khamnei is the owner of a rental unit, 233-235 St. Paul Street, in the City of Burlington which is the subject of these proceedings.
2. On July 25, 2019, petitioner appealed the denial from the Code Enforcement Office for a longer extension to make repairs to four of his rental properties, including the subject property. With respect to the subject property, petitioner had been granted an extension to August 15, 2019.
3. At the Board's hearing, petitioner testified the repairs were completed and he did not need an extension of time. Minimum Housing Inspector Matthew Perry confirmed that on August 15, 2019 he found the property in compliance. A Certificate of Compliance for the property was issued on September 30, 2019.

CONCLUSIONS OF LAW

4. 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). A Certificate of Compliance for the property was issued on September 30, 2019. Therefore, there is no action for the Board to take.

ORDER

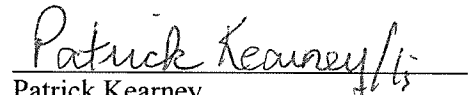
Accordingly, it is hereby ORDERED:

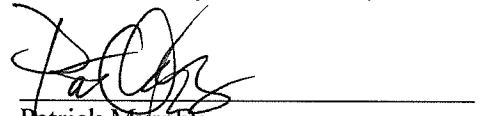
5. The issue is moot and the case DISMISSED.

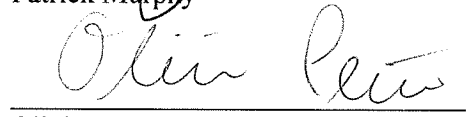
DATED at Burlington, Vermont this 23rd day of October, 2019.

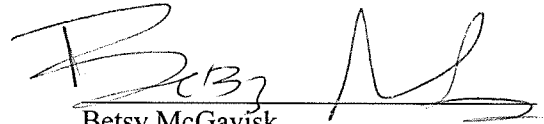
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Patrick Murphy


Olivia Pena


Betsy McGavisk



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

NOTICE OF DECISION

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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 10/23/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Chris Khamnei
William Ward
Ita Meno

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

**In re: Request for Hearing of CHRIS KHAMNEI)
Regarding the Rental Property at 240) CITY OF BURLINGTON
Pine Street) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Chris Khamnei was present and testified. Also appearing and testifying were William Ward, Director of Permitting and Inspections, and Minimum Housing Inspectors Kim Ianelli and Matt Perry.

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. Petitioner Chris Khamnei is the owner of a rental unit, 240 Pine Street, in the City of Burlington which is the subject of these proceedings.
2. On May 1, 2019, Minimum Housing Inspector Ita Meno conducted a partial inspection of the property. Ms. Meno found 9 violations and issued an Order dated May 6, 2019. A reinspection was scheduled for June 12, 2019; petitioner requested an extension which was granted to July 12, 2019. When the extension was granted, the Code Enforcement Office also noted that the Certificate of Compliance expired on Dec. 31, 2017 with the inspection open since January 5, 2018 and multiple extensions granted.
3. On July 12, 2019, Inspector Meno reinspected the property and found violations in 2 of the units; petitioner was not present. Inspector Meno issued an Order on July 26, 2019. As there were violations at the reinspection, petitioner was assessed \$150 in fees.
4. On July 25, 2019, petitioner appealed the denial of a longer extension to make repairs to the property and appealed the assessment of reinspection fees.

5. Petitioner did not dispute the violations, but requested an extension to complete the repairs. At the hearing, petitioner testified that items 1 through 6 and item 9 on the May 6 Order were complete and he did not need an extension for those items. The remaining repairs relate to the porch.

6. According to William Ward, the porch has been in disrepair going on 2 years. The May 6 Order required petitioner to repair the porch to make it safe and sound and to repair the roof over the porch which was leaking. In response, petitioner took the roof off the porch. Petitioner wants to take the entire porch off and rebuild it; he has a building permit for the work. The Code Office requested that the Board order petitioner to complete the repairs at the property within 60 days.

7. Again, petitioner did not dispute the existence of the violations, but requested more time to make the repairs. Petitioner testified that 3 years ago he was involved in a very difficult probate matter which consumed his life and caused him to get behind. He also described his struggle financially and time-wise to make repairs on all his properties. Petitioner requested that he be given 1 year to make repairs to all of his properties.

CONCLUSIONS OF LAW

8. 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).

9. At the hearing, the Board confirmed that petitioner's request is limited to an extension of time to complete the repairs at the property, not the existence of the violations. Under Sec. 18-25 of the Minimum Housing Code, an Order may require minimum housing code violations to be corrected within 60 days or less. Within 15 business days after the date on which required repairs are to be completed, but no later than 30 days after the order is posted or received, the Code Enforcement Office shall determine if the order has been complied with; if the order has not been complied with and a written extension has not been granted or an appeal to this Board taken, a report and order will be issued. Minimum Housing Code

Sec. 18-27. It is the practice of the Code Enforcement Office to grant extensions for no more than 30 days.

10. Petitioner has requested an extension to complete the repairs at the property. The 2 outstanding violations at the property relate to the porch. The items were cited in the Order dated May 6, 2019 order. Petitioner has had several months to correct the violations and was granted an extension to July 12, 2019. The Board concludes petitioner has had more than enough time to complete the repairs. Petitioner described the difficulty of keeping up with all his properties. However, as the owner of rental property, petitioner has an obligation to comply with the minimum housing standards. Regardless of the number of properties petitioner has chosen to acquire, his responsibility remains the same. Therefore, the Board will order that the repairs be completed 60 days from the issuance of this Order.

11. With respect to the assessment of reinspection fees, Sec. 18-30 of the Minimum Housing Code allows for a first reinspection fee of \$75.00 per unit for a reinspection that is required due to the existence of violations. At the reinspection on July 12, 2019, there were continuing violations at the property so that petitioner was assessed \$150.00 in reinspection fees. The Board concludes the reinspection fees were properly assessed.

ORDER

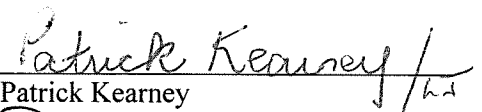
Accordingly, it is hereby ORDERED:

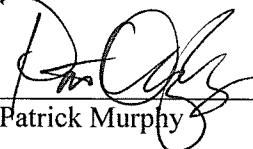
12. The Minimum Housing Order dated May 6, 2019 is AFFIRMED. Petitioner has 60 days from the date of this Order to make the repairs cited in the May 6 Minimum Housing Order.

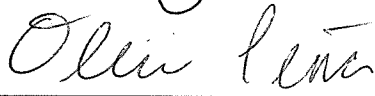
DATED at Burlington, Vermont this 23rd day of October, 2019.

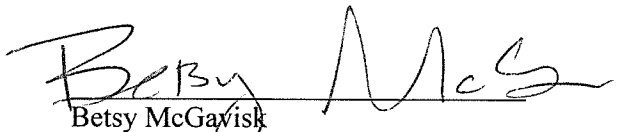
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Patrick Murphy


Olivia Pena


Betsy McGavisk



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

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**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 10/10/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Chris Khamnei
William Ward
Kim Ianelli

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

**In re: Request for Hearing of CHRIS KHAMNEI)
Regarding the Rental Property at 421) CITY OF BURLINGTON
Main Street) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Chris Khamnei was present and testified. Also appearing and testifying were William Ward, Director of Permitting and Inspections, and Minimum Housing Inspectors Kim Ianelli and Matt Perry.

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. Petitioner Chris Khamnei is the owner of a rental unit, 421 Main Street, in the City of Burlington which is the subject of these proceedings.
2. On December 21, 2018, Minimum Housing Inspector Kim Ianelli conducted a routine inspection of the property. Ms. Ianelli found 10 violations and issued an Order on December 24, 2018. A re-inspection was scheduled for January 31, 2019, but at petitioner's request, it was rescheduled for February 6, 2019.
3. At the first follow-up inspection on February 6, 2019, Inspector Ianelli found 10 continued violations. As the violations from the initial inspection were not repaired, petitioner was charged a reinspection fee. A second reinspection was scheduled for March 13, 2019.
4. At the second reinspection on March 13, 2019, Inspector Ianelli found 2 continued deficiencies with respect to the exterior of the building: peeling paint and rotting wood around the front bannister and windowsills. Petitioner was given until June 1, 2019 to correct the remaining violations.

Although there were still violations which had not been repaired, the Code Enforcement Office did not charge any reinspection fees because substantial progress had been made with respect to repairs at the property. William Ward noted that it is common for their office to waive inspection fees where notable progress has been made. A third follow up inspection was scheduled for June 3, 2019.

5. On May 28, 2019, petitioner requested an extension to September 30, 2019 to complete the repairs at the property. The Code Enforcement Office granted an extension to August 1, 2019. On July 25, 2019, petitioner appealed the denial of an extension to this Board.

6. Petitioner did not dispute the existence of the violations, but requested more time to make the repairs. Petitioner testified that 3 years ago he was involved in a very difficult probate matter which consumed his life and caused him to get behind. He also described his struggle financially and time-wise to make repairs on all his properties. Petitioner requested an additional 30 days to complete the work; he stated he would have the work completed by November 1, 2019. The Code Enforcement Office requested the repairs be made within 30 days of the Board's decision.

CONCLUSIONS OF LAW

7. 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).

8. At the hearing, the Board confirmed that petitioner's request is limited to an extension of time to complete the repairs at the property, not the existence of the violations. Under Sec. 18-25 of the Minimum Housing Code, an Order may require minimum housing code violations to be corrected within 60 days or less. Within 15 business days after the date on which required repairs are to be completed, but no later than 30 days after the order is posted or received, the Code Enforcement Office shall determine if the order has been complied with; if the order has not been complied with and a written extension has not been granted or an appeal to this Board taken, a report and order will be issued. Minimum Housing Code

Sec. 18-27. It is the practice of the Code Enforcement Office to grant extensions for no more than 30 days.

9. Petitioner has requested an extension to complete the repairs at the property. The 2 outstanding violations at the property were first cited after Inspector Ianelli's inspection on December 21, 2018 inspection. Petitioner has had several months to correct the violations and was granted an extension to August 1, 2019. The Board concludes petitioner has had more than enough time to complete the repairs. Petitioner described the difficulty of keeping up with all his properties. However, as the owner of rental property, petitioner has an obligation to comply with the minimum housing standards. Regardless of the number of properties petitioner has chosen to acquire, his responsibility remains the same. Petitioner testified that he can complete the repairs by November 1, 2019. Therefore, the Board will order that the repairs be completed by November 1, 2019.

10. With respect to the assessment of reinspection fees, Sec. 18-30 of the Minimum Housing Code allows for a first reinspection fee of \$75.00 per unit for a reinspection that is required due to the existence of violations. At the reinspection on February 6, 2019, there were continuing violations at the property so that petitioner was assessed \$120.00 in reinspection fees. The Board concludes the reinspection fees were properly assessed.

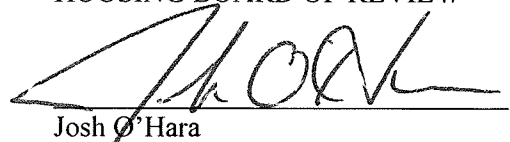
ORDER

Accordingly, it is hereby ORDERED:

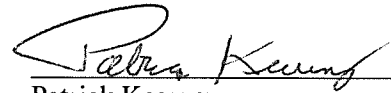
11. The Minimum Housing Order dated March 13, 2019 is AFFIRMED. Petitioner has until November 1, 2019 to make the repairs cited in the Order.

DATED at Burlington, Vermont this 10th day of October, 2019.

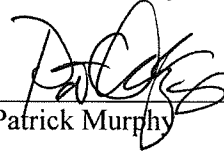
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



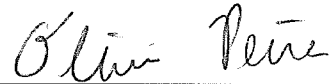
Josh O'Hara



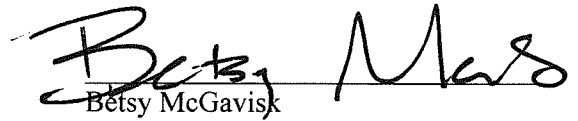
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

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**HOUSING BOARD OF REVIEW
CITY OF BURLINGTON**

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DATED 10/10/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Chris Khamnei
William Ward
Kim Ianelli

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

**In re: Request for Hearing of CHRIS KHAMNEI)
Regarding the Rental Property at 395) CITY OF BURLINGTON
College Street) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioner Chris Khamnei was present and testified. Also appearing and testifying were William Ward, Director of Permitting and Inspections, and Minimum Housing Inspectors Kim Ianelli and Matt Perry.

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. Petitioner Chris Khamnei is the owner of a rental unit, 395 College Street, in the City of Burlington which is the subject of these proceedings.
2. On May 13, 2019, the Code Enforcement Office (now designated the Department of Permitting and Inspections) received a complaint from a tenant at the property after a ceiling in her apartment collapsed. In response to that complaint, Inspector Ianelli inspected the property and found 17 minimum housing code violations; she sent an Order to petitioner requiring compliance by May 31, 2019. A follow-up inspection was conducted on June 3, 2019.
3. On June 18, 2019, Inspector Ianelli sent petitioner a follow-up Order outlining the 8 remaining deficiencies from the May 13 inspection found at the June 3 follow-up inspection. The June 18 Order required compliance by July 30, 2019. On July 25, 2019, petitioner appealed the June 18 Order and requested an extension to complete the repairs.

4. William Ward confirmed that item 7 (an exterior handrail) was repaired and was no longer an issue. Petitioner testified that items 2, 3, and 5 had been cured. The remaining items relate directly or indirectly to the roof and water damage.

5. In 2016, petitioner stripped the roof of the asphalt shingles with the plan to put on a slate roof.¹ To date he has put down sheathing, one layer of membrane (specifically, Grace Ice and Water Shield), plywood and another layer of membrane; the second layer of membrane was put on over the summer. The inspector and William Ward cannot confirm the existence of all the layers, but they confirm that the roof is currently covered by membrane.

6. Sec. 18-71 of the Minimum Housing Code requires that roofs be structurally sound, tight and not have defects which might admit rain and roof drainage; in addition, roof drainage shall be prevented from causing dampness in the walls or interior portions of the building. Sec. 18-70 of the Code requires that all repairs, maintenance work, alterations or installations be performed and installed in a skilled manner and installed in accordance with the manufacturer's installation instructions in order to allow the performance intended.

7. There is no dispute that the roof is not shingled and that the shingles were removed in 2016. Code Enforcement argues that the roof is not in compliance with the ordinance because it has admitted rain and dampness into the property and it does not meet the requirement that work be performed in a skilled manner and installed in accordance with the manufacturer's instructions. Petitioner argued that the membrane covering the roof is impervious to rain and can be exposed for years without damage occurring to it. He describes roof shingles as merely cosmetic. However, the manufacturer's product information states, "[d]o not leave permanently exposed to sunlight. Cover within 90 days." In addition, the product description specifically refers to the product as an underlayment to be used in conjunction with roof designs.

¹ A building permit to remove asphalt shingles on the roof and replace with new asphalt shingles was issued November 5, 2018.

8. Petitioner also requested additional time to complete the roof (ie, install the slate). Petitioner testified that 3 years ago he was involved in a very difficult probate matter which consumed his life and caused him to get behind. He also described his struggle financially and time-wise to make repairs on all his properties. Petitioner believed he could finish the roof by June 1, 2020, but ideally, he would like to have one year to make repairs on all his properties. The Code Enforcement Office opposed petitioner's request for additional time.

9. With respect to items 1, 6 and 8 on the June 18 Order (which relate to exterior walls and door and window frames), petitioner did not dispute the items needed to be repaired, but again, he requested additional time to make them. In addition, petitioner did not want to fix exterior walls and tear siding off the building before the roof was complete.

CONCLUSIONS OF LAW

10. 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).

11. At the hearing, the Board confirmed that petitioner's request is for an extension of time to complete the repairs at the property. At the same time, however, petitioner argued that, with respect to the roof, he did not know what the violation was as he believed the roof (in its current, unfinished condition) was impervious to water, thereby complying with the minimum housing standard.

12. With respect to the roof, the Board affirms the Order and existence of a violation. Sec. 18-71 of the Code requires that roofs be structurally sound, tight and not have defects which might admit rain and roof drainage. In addition, Sec. 18-70 of the Code requires that all repairs, maintenance work, alterations or installations be performed in a skilled manner and installed in accordance with manufacturer's instructions. Evidence shows the roof has submitted rain into the property and walls causing damage, including causing a ceiling in one of the units to collapse. In addition, the Board concludes that the roof installation has not been performed in a skilled manner (inasmuch as it has not

been shingled) and it has not been installed in accordance with the guidelines described in the product description of the membrane currently covering the roof.

13. Under Sec. 18-25 of the Minimum Housing Code, an Order may require minimum housing code violations to be corrected within 60 days or less. Within 15 business days after the date on which required repairs are to be completed, but no later than 30 days after the order is posted or received, the Code Enforcement Office shall determine if the order has been complied with; if the order has not been complied with and a written extension has not been granted or an appeal to this Board taken, a report and order will be issued. Minimum Housing Code Sec. 18-27. It is the practice of the Code Enforcement Office to grant extensions for no more than 30 days.

14. Petitioner has requested an extension to complete the repairs at the property. The Code Enforcement Office opposes granting an extension. On May 13, 2019, an Order was issued requiring compliance by May 31, 2019. As a result of the reinspection on June 3, an order was sent on June 18, 2019 requiring compliance by July 30, 2019. At the Board's hearing, 4 of the violations were still outstanding. With respect to the roof, the shingles were removed in 2016 and the project to install a new roof has been ongoing since then. The Board concludes petitioner has had more than enough time to complete the installation of the roof. Petitioner described the difficulty of keeping up with all the properties. However, as the owner of rental property, petitioner has an obligation to comply with the minimum housing standards. Regardless of the number of properties petitioner has chosen to acquire, his responsibility remains the same. Therefore, the Board denies petitioner's request for an extension of time to make repairs.

ORDER

Accordingly, it is hereby ORDERED:

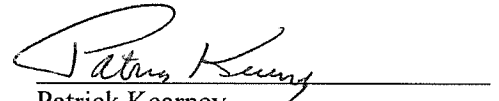
15. The Minimum Housing Order dated June 18, 2019 is AFFIRMED and the request for an extension of time to make the repairs cited in the Order is DENIED.

DATED at Burlington, Vermont this 10th day of October, 2019.

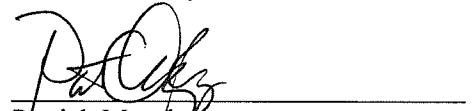
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara



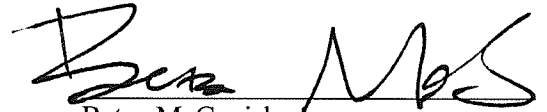
Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk



HOUSING BOARD OF REVIEW

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DATED 10/10/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Tim Heffernan
Stanley & Nancy Mikrut

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

**In re: Request for Hearing of TIM HEFFERNAN,)
ARTHUR CONOVER and RYAN DARLING) CITY OF BURLINGTON
Regarding Withholding of Security) HOUSING BOARD OF REVIEW
Deposit by STANLEY & NANCY MIKRUT)
for Rental Unit at 42 Latham Ct, Apt. 1)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on September 30, 2019. Board Chair Josh O'Hara presided. Board Members Patrick Kearney, Patrick Murphy, Olivia Pena and Betsy McGavisk were also present. Petitioners Tim Heffernan, Arthur Conover and Ryan Darling were present and testified. Respondents Stanley and Nancy Mikrut were represented at the hearing by Greg Monteith who 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. Respondents Stanley and Nancy Mikrut are the owners of a rental unit, 42 Latham Court, in the City of Burlington which is the subject of these proceedings. Greg Monteith manages the property for respondents.
2. Petitioners Tim Heffernan, Ryan Darling and Arthur Conover and another person who is not a party to this proceeding, Justice Lee, moved into the rental unit with a written lease which ran from June 1, 2018 to May 31, 2019. Monthly rent was \$2695.00.
3. Petitioners paid a security deposit of \$2600.00 to respondent¹. 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 31, 2019.

¹ The security deposit was rolled over from the previous year when petitioners Tim Heffernan and Ryan Darling first moved into the apartment.

5. On June 13, 2019 respondents sent petitioners a letter notifying them that their entire deposit was being withheld for damages and unpaid rent. Interest in the amount of \$54.00 was credited to the deposit. The letter did not inform petitioners of their right to request a hearing before this Board. Petitioners disputed the deductions, as well as the sufficiency of the notice provided to them.

6. Petitioners also alleged that respondents willfully withheld the deposit and requested the Board to order double damages. The basis of their request is that they believed they would not be held liable for Justice Lee's unpaid rent even though they were jointly and severally liable under the lease. Petitioners testified that they were assured by respondents that they would pursue Justice Lee or his co-signor for unpaid rent owed by him. Nonetheless, their deposit was withheld, in part, for his unpaid rent. Greg Monteith testified that petitioners were good tenants who unfortunately had a bad roommate leaving respondents with almost \$6,000.00 in unpaid rent.

CONCLUSIONS OF LAW

7. 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.

8. 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.

9. 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).

10. 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.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. In this case, respondents failed to comply with the notice requirements by failing to include petitioners' appeal rights in the statement. Therefore, the Board concludes respondents forfeited the right to withhold any part of the deposit.

11. Petitioners argued that respondents 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). Petitioners argued that respondents' decision to withhold their deposit for a roommate's unpaid rent, despite assurances they believed the received from respondents not to, evidenced willful withholding of the deposit. The Board concludes respondents' withholding of the deposit was not willful. There is no dispute that there was unpaid rent owed to respondents or that the tenants were jointly and severally liable under the lease. City ordinance and state law allow a security deposit to be withheld for unpaid rent. Respondents' decision to withhold the deposit for unpaid rent was allowable under city ordinance and state law; if they changed their minds about doing so, it does not demonstrate a willfully unlawful withholding.

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

ORDER

Accordingly, it is hereby ORDERED:

12. Petitioners Tim Heffernan, Arthur Conover and Ryan Darling are entitled to recover from respondents Stanley and Nancy Mikrut the following amounts:

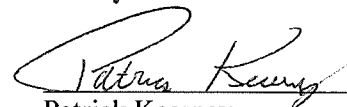
a) \$2654.00 of the principal amount of the deposit (including the accrued interest) improperly withheld after June 14, 2019; and

b) Additional interest of \$0.02 per day from June 15, 2019 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 10th day of October, 2019.

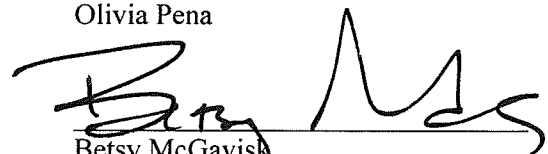
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Josh O'Hara


Patrick Kearney


Patrick Murphy


Olivia Pena


Betsy McGavisk

BURLINGTON HOUSING BOARD OF REVIEW

Monday, September 30, 2019

7:00 p.m.

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

Minutes

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

Staff present: Lisa Jones

1. Chris Khamnei (property owner) (code case) re: 395 College St, 240 Pine St, 421 Main St and 233-235 St. Paul St
Present were: Chris Khamnei, William Ward, Matt Perry, Kim Ianelli; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
2. Cailin Gramling, Natalie Fuchs, Sarah Jacoby, Bryn Hickley, Ava Lavalee (tenants); Eric Winslow (landlord) (security deposit case) re: 39 So. Union St
Tenants withdrew request before hearing. Case closed.
3. Tim Heffernan, Arthur Conover, Ryan Darling (tenants); Stanley & Nancy Mikrut (landlord) (security deposit case) re: 42 Latham Ct
Present were: Tim Heffernan, Arthur Conover, Ryan Darling, Greg Monteith; all parties were sworn in.
The Board took evidence and testimony from all parties. Hearing was concluded.
4. Tara Verstandig, Courtney Carr, Amanda Martinez, Caroline Robinson (tenants); Perry-Sargeant Properties LLC (landlord) (security deposit case) re: 21 Hyde St, Apt. 4
Case was settled prior to hearing and closed.