



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 5/17/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Fareed Abdullahi
BPJS Management LLC

**In re: Request for Hearing of FAREED)
ABDULLAHI Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by BPJS) HOUSING BOARD OF REVIEW
MANAGEMENT LLC for Rental Unit at)
214 North Avenue, Apt. A)**

The above-named hearing came before the Housing Board of Review on April 18, 2016. Board Chair Ben Traverse presided. Board Members Jason L’Ecuyer and Patrick Kearney were also present. Petitioner Fareed Abdullahi was present and testified. Respondent BPJS Management LLC was represented at the hearing by Brennan Kelley from Bissonette Properties.

FINDINGS OF FACT

- 1

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). Here, proper notice was provided.

12. Based on the evidence and testimony, the Board concludes the deductions for trash and unpaid rent were proper. Petitioner did not dispute the deduction for trash removal. With respect to unpaid rent, city ordinance requires a tenant to provide written notice of termination of a month-to-month tenancy at least 2 rental payment periods in advance of the termination date specified in the notice. Minimum Housing Code Sec. 18-29a(b). Petitioner provided notice on December 7, 2015 that he was moving out on January 8, 2016. Due to the insufficient notice, respondent was unable to rent the apartment until February 1, 2016. Consequently, the Board concludes the deduction was proper.

13. As the deductions for trash removal and unpaid rent are in excess of the amount of the security deposit plus interest, the Board concludes the withholding of the entire deposit, including interest, was proper.

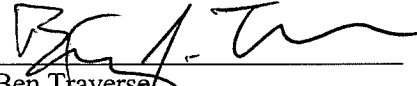
ORDER

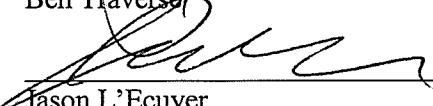
Accordingly, it is hereby ORDERED:

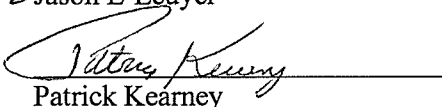
14. Petitioner Fareed Abdullahi's request for relief is DENIED.

DATED at Burlington, Vermont this 17th day of May, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L'Ecuier


Patrick Kearney



HOUSING BOARD OF REVIEW

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CITY OF BURLINGTON

NOTICE OF DECISION

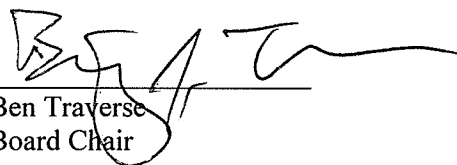
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 5/17/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Chris Khamnei
Kim Ianelli
William Ward
Patricia Wehman

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 199 South Union 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:

FINDINGS OF FACT

1. Petitioner Chris Khamnei is the owner of a rental property, 199 South Union Street, in the City of Burlington which is the subject of these proceedings.
2. On December 14, 2015, Code Enforcement Officer Kim Ianelli conducted a routine inspection of the property. In her order dated December 16, 2015, Ms. Ianelli noted several minimum housing code violations: no heating inspection tags on the building's heating systems, deteriorated painted surfaces, lack of a graspable handrail, damaged walls, a loose toilet, a cracked window and a slow sink drain.
3. On January 15, 2016, petitioner appealed the order.
4. Section 18-86(c)(5) requires all fuel burning heating systems to be inspected and serviced biennially by a certified technician with proof of inspection stated on a tag issued by the Department of

¹ This matter was originally scheduled to be heard on February 16, 2016 and proceeded before Board members Traverse and Kearney. Petitioner raised an objection regarding a majority of the Board not being present. The City's ordinances expressly provide that where a majority of the Board is unavailable to hear a matter, a hearing officer may be appointed to proceed. See Section 18-54 of the Minimum Housing Code. The Board is unaware of any past decision being overruled on the ground that it was issued by an appointed hearing officer. That said, the acknowledges that the City's ordinance can be read as conflicting with the State statute on housing boards of review, see 24 V.S.A. § 5005(c)(4), which appears to require that a majority of the Board sit to hear appeals from code enforcement officers. To avoid any procedural issues caused by this conflict, the Board rescheduled this hearing to April 18, 2016.

Public Works (hereinafter "DPW"). The tags currently issued by DPW include a line at the top of the tag to record the CO reading and date of inspection (a requirement of the 2012 State Fire and Building Safety Code). At the time of the inspection, tags were not present on the building's heating systems.

5. Petitioner, who is a certified technician, indicated at hearing that the tags are currently on the heating systems. The Board reviewed photographic evidence supporting this contention. However, according to the Code Enforcement Office, the tags remain deficient. Rather than list the CO reading and date of inspection on the front of the tags, Petitioner affixed to the back of the tags a printout of the reading, akin to a sales receipt. The Code Enforcement Office also noted that the printout lists an incorrect date of inspection. Petitioner testified that he has since transferred the proper inspection date and associated CO reading to the front of each tag.

6. Section 112(a)(1) and (2) of the Minimum Housing Code requires the exterior of a dwelling constructed prior to 1978 to be free from deteriorated painted surfaces equal to or greater than 1 square foot in the aggregate; if exterior deteriorated paint is found after November 1, the owner has until the following May 31 to repair the area. There are several exterior areas with flaking and chipped paint. Petitioner is aware that he has until May 31, 2016 to repair those areas.

7. Section 18-74 of the Minimum Housing Code requires every inside and outside stair, porch, railing and any appurtenance to be safe to use and capable of supporting the load that normal use may cause to be put thereon and to be kept in sound condition and good repair. The exterior stairway to unit 11 does not have a graspable handrail. Petitioner claims that he does not know how to fix the handrail because he lacks the specifications for a handrail. However, the order includes specifications for a handrail. Further guidance is provided by consulting the Vermont Fire and Building Safety Code. At hearing, Petitioner also speculated that if he is required to install a graspable handrail, he will also be required to bring the entire stairway into conformance with current building standards.

8. Section 18-72(b) of the Minimum Housing Code requires interior walls and ceilings to be maintained in sound condition and good repair; cracked or loose plaster, peeling paint, decayed wood, and

other deteriorated or damaged surfaces must be eliminated. At the inspection, there was a hole in the wall near the entrance to unit 10 and a deteriorated surface in unit 4 below the heater.

9. Section 18-104 of the Minimum Housing Code requires every plumbing fixture to be kept in sound working condition. At the inspection, the toilet in the bathroom of unit 12 was loose.

10. Section 18-73 of the Minimum Housing Code requires windows to be kept in sound condition and good repair; exterior windows must be constructed and maintained to prevent wind and water from entering the dwelling and must be weathertight. At the inspection, the exterior windowpane of a kitchen window in unit 3 was cracked.

11. Section 18-79 of the Minimum Housing Code requires supply lines, plumbing fixtures, vents and drains to be connected and maintained in good working order and to be kept free from obstructions, leaks and defects. At the inspection, the bathroom sink in unit 9 was not draining properly.

CONCLUSIONS OF LAW

12. Section 18-42(d) of the Minimum Housing Code grants the Housing Board of Review 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.

13. Based on the evidence, the Board affirms the December 16, 2015 order.

14. With particular respect to the heating tags, the Board notes that if, upon reinspection, the heating tags are present in a form that correlates with Petitioner's testimony, they should be deemed to be in compliance with the Minimum Housing Code. To the extent deficiencies were present on Petitioner's initial printouts, the Board's understanding is that Petitioner's subsequent corrections would have been a proper exercise of his authority as a certified technician. The Board acknowledges, however, that accurate CO readings are absolutely essential towards maintaining a safe living environment. Accordingly, to the extent the Code Enforcement Office has any reason to question the accurateness of Petitioner's corrected readings, it should act within the full scope of its authority to correct any errors.

15. As regarding the requirement that Petitioner install a graspable handrail, the Board notes that Petitioner is effectively requesting a variance. Petitioner is merely speculating, though, when he expresses concern that he may also be required to modify the remainder of the staircase. The Board may not base a variance on speculation; rather, the Petitioner must demonstrate that “[b]y reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued.” Minimum Housing Code, Sec. 18-42(c). Based on the evidence, the Board is unable to determine that Petitioner would, in fact, be required to modify the entire staircase; let alone that such a modification would warrant a variance.

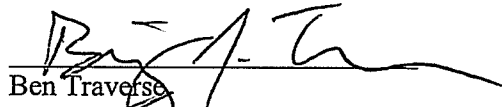
ORDER

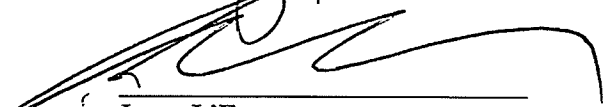
Accordingly, it is hereby ORDERED:

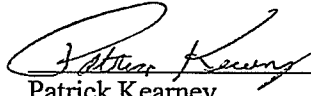
14. The Minimum Housing Order dated December 16, 2015 regarding 199 South Union Street is **AFFIRMED**. With the exception of the exterior painted surfaces which petitioner has until May 31 to repair, petitioner has 30 days from the date of this Order to make all other repairs.

DATED at Burlington, Vermont this 17th day of May, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L'Ecuier


Patrick Kearney



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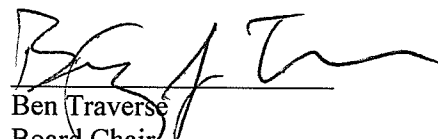
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 5/17/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Chris Khamnei
Matthew Perry
William Ward
Patricia Wehman

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 395 College Street, Unit 1) HOUSING BOARD OF REVIEW**

upon inquiry, the window company informed him that it does not produce an openable window of the size and type Petitioner requires. Petitioner estimated the cost to vent the toilet room with a fan is \$300-\$400. Petitioner also believes he could put the window on hinges so that it could be propped open.

5. When the Board inquired as to the purpose of an openable window in a toilet room without a shower or bath, Matthew Perry and William Ward discussed the importance of ventilating odors. There is no evidence of any moisture in the toilet room.

CONCLUSIONS OF LAW

6. As noted above, Sec. 18-84(c) of the Minimum Housing Code requires a window of sufficient size “to prevent the buildup of moisture.” This qualifying statement indicates to the Board that the City Council’s intent was to mitigate moisture. To the extent the Council was concerned with odors or other bathroom-related pleasantries, it could have included such in the ordinance or omitted a qualifying statement altogether.

7. Petitioner’s toilet room does not include a shower or bath. At the time of the inspection, there was no evidence of moisture buildup. This is not to say that a toilet room without a shower or bath will, as a general matter, never present moisture issues. However, here, the Board specifically asked Code Enforcement whether it cited this toilet room as violation because it did not have a window of sufficient size “to prevent the buildup of moisture,” and Code Enforcement answered in the negative. Rather, Code Enforcement testified that a window is necessary to mitigate odors.

8. Whereas the Board agrees that elimination of odors is a commendable goal, and recommends that Petitioner act to better ventilate his toilet room for that purpose, it is unable to conclude that the absence of a window of sufficient size to prevent odors is a violation of the Minimum Housing Code.

9. Should Code Enforcement be able to present sufficient evidence indicating that a window is necessary in Petitioner’s toilet room “to prevent the buildup of moisture,” it may recite this issue at the time of a future inspection. Without such evidence, the Board is unable to affirm the inspection order as it relates to this issue.

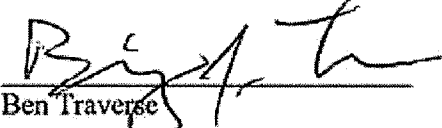
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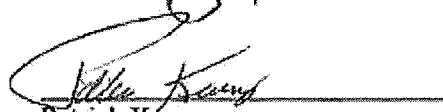
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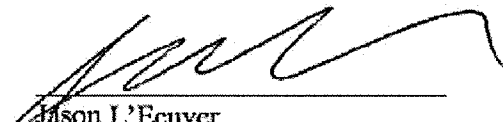
10. The Minimum Housing Order dated February 26, 2016 regarding 395 College Street, Unit 1, is **REVERSED** with respect to the issue of ventilating the first floor toilet room. The Order otherwise remains in full force and effect and is not affected by this decision.

DATED at Burlington, Vermont this 17 day of May, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Patrick Kearney


Jason L'Ecuier



HOUSING BOARD OF REVIEW

City of Burlington

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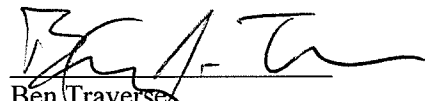
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DATED 5/17/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Chris Khamnei
Ita Meno
William Ward
Patricia Wehman

**In re: Request for Hearing of CHRIS)
KHAMNEI Regarding the Rental) CITY OF BURLINGTON
Property at 233-235 St. Paul 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 Chris Khamnei is the owner of a rental property, 233-235 St. Paul Street, in the City of Burlington which is the subject of these proceedings. There are 11 units in the building.

2. On February 5, 2016, Minimum Housing Inspector Ita Meno conducted a routine inspection of the property. The parties agreed that after the inspection, Ms. Meno reviewed violations with Petitioner's property manager. In her order dated February 18, 2016, Ms. Meno noted 23 minimum housing code violations at the property. On March 28, 2016, petitioner appealed the order.

3. Ita Meno cited the windows in units 1, 3, 4, 5, 6, 7, 8, 9 and 10 as lacking required inserts. Section 18-112(g) requires window wells in pre-1978 rental housing units to have vinyl or metal inserts. Ms. Meno noted that several windows throughout the building were missing inserts; however, she did not check every window in each unit and she was unable to identify the specific windows in each unit that were missing inserts. The Code Enforcement Office did not present any documentary evidence of the cited windows. Petitioner disputed that there were missing inserts in the units cited.

4. Ita Meno also cited the windows in units 1, 2, 5, 6 and 7 as not easily held in position by window hardware. Section 18-73(c) of the Minimum Housing Code requires every openable window to be easily opened and held in position by window hardware; further, all window hardware must be maintained in good condition. Ita Meno and Kim Ianelli noted there were some windows which would not stay up when opened. Neither Ms. Meno nor Ms. Ianelli were able to say specifically which windows in which unit would not stay open. Again, the Code Enforcement Office did not present any documentary evidence of the cited windows. Petitioner argued that all the windows stayed open with the use of a peg system, which the inspectors did not know how to use.

5. Section 18-74 of the Minimum Housing Code requires every inside and outside stair, porch, railing and any appurtenance to be safe to use and capable of supporting the load that normal use may cause to be put thereon and to be kept in sound condition and good repair. The exterior stairway on the St. Paul Street side of the building does not have a graspable handrail. At hearing, Petitioner speculated that if he is required to install a graspable handrail, he will also be required to bring the entire stairway into conformance with current building standards.

6. Section 18-104 of the Minimum Housing Code requires every plumbing fixture to be constructed and installed so that it will function safely and effectively, and must be kept in sound working condition. The faucet in the kitchen of unit 0 is taped so that it works. The kitchen faucet in unit 4 leaks and the kitchen faucet in unit 6 drips.

7. Section 18-72 of the Minimum Housing Code requires interior walls and ceilings to be maintained in sound condition and good repair: deteriorated or damaged surface conditions must be eliminated. The bathroom ceiling in unit 1 is soft in two spots.

8. Section 18-73 of the Minimum Housing Code requires every exterior window to be constructed and maintained to prevent wind and water from entering the dwelling or structure. In addition, every window must be weathertight and every window pane must be fully and properly glazed. The exterior window pane in the dining room window of unit 5 is broken.

9. Section 18-85 of the Minimum Housing Code requires all electrical equipment, wiring and appliances to be installed and maintained in a safe manner in accordance with applicable laws. At the time of the inspection, there was tape over a circuit breaker panel located in the living room of unit 1. The light cover in the bathroom of unit 8 was broken.

CONCLUSIONS OF LAW

10. Section 18-42(d) of the Minimum Housing Code grants the Housing Board of Review 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.

11. The minimum housing order cited windows throughout the building as lacking the required inserts and as not being held in position by window hardware. The inspectors were unable to identify which windows in each of the units did not meet the minimum standards. The Board concludes there is insufficient evidence to conclude the windows cited do not meet the standards. However, the Board concludes the windows at the property should be subject to a new inspection so that any windows which do not meet the minimum requirements can be more easily identified.

12. With respect to items 1, 2, 3, 5, 7, 12, 16 and 21 of the minimum housing order, the Board affirms the order. Those items must be repaired and corrected. As regarding the requirement that Petitioner install a graspable handrail, the Board notes that Petitioner is effectively requesting a variance. Petitioner is merely speculating, though, when he expresses concern that he may also be required to modify the remainder of the staircase. The Board may not base a variance on speculation; rather, the Petitioner must demonstrate that “[b]y reason of an extraordinary and exceptional situation unique to the property or circumstances involved, the requirements of this chapter would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the person to whom the order has been issued.” Minimum Housing Code, Sec. 18-42(c). Based on the evidence, the Board is unable to determine that Petitioner would, in fact, be required to modify the entire staircase; let alone that such a modification would warrant a variance.

ORDER

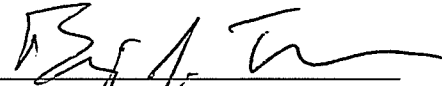
Accordingly, it is hereby ORDERED:

13. The Minimum Housing Order dated February 18, 2016 regarding 233-235 St. Paul Street is **AFFIRMED** with respect to items 1, 2, 3, 5, 7, 12, 16 and 21.

14. The Minimum Housing Order dated February 18, 2016 regarding 233-235 St. Paul Street is **REVERSED** with respect to items 6, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 22, and 23. However, the Board directs the Code Enforcement Office to conduct a new inspection of the windows at the property within 30 days of the Board's decision.

DATED at Burlington, Vermont this 17th day of May, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L'Ecuier


Patrick Kearney