



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

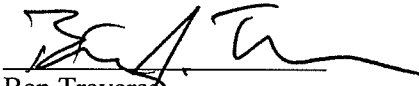
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Jon & Jennifer Woods
Tim Ahonen, Code Enforcement Office
Patricia Wehman, Code Enforcement Office

**In re: Request for Hearing of JON and JENNIFER WOODS Regarding the Rental Property at 20 School St, Apt. 1) CITY OF BURLINGTON
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. Petitioners Jon and Jennifer Woods are the owners of a rental unit, 20 School Street, Apt. 1, in the City of Burlington.

2. On January 7, 2016, Minimum Housing Inspector Tim Ahonen conducted an inspection of the premises. In his Order of January 11, 2016, Mr. Ahonen noted that the bathroom in apartment 1 did not have a window or fan in it. Section 18-84(c) of the Minimum Housing Code requires every bathroom or toilet room to have 1 window of sufficient size opening to the outdoors or a fan or mechanical device vented to the outdoors to prevent the buildup of moisture.

3. On January 25, 2016, petitioners requested a variance from the code standard related to the bathroom. The bathroom is located in the original part of the house which was built more than a century ago. Petitioners testified that it would be difficult, if not impossible, to install a window that would open to the outdoors. In addition, petitioners conferred with a contractor who indicated it would be prohibitively expensive to install a fan. Currently, there is a gap in a cabinet door located between the bathroom and the kitchen which provides a bit of ventilation. There has never been a problem with mold

in the bathroom; Tim Ahonen confirmed that there was no evidence of mold when he inspected the bathroom. In addition, the lack of ventilation has never been identified as a problem on previous inspections.

CONCLUSIONS OF LAW

4. 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 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). Petitioner has met this standard; there is no way to add a window to the bathroom and it would be cost prohibitive to install a fan.

5. 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....

See also, 24 V.S.A. Sec. 5005(c)(2). Accordingly, the Board will grant petitioners a variance to the extent that they may keep the bathroom in apartment 1 in its current condition, as long as it continues to prevent the buildup of moisture and associated mold and mildew. If a subsequent inspection reveals existing conditions that are detrimental to the occupants' health or safety, code officials may still rely on Section 18-84(c) of the Minimum Housing Code. Furthermore, should petitioners or any subsequent owner(s) undertake renovations that render the cost of compliance less prohibitive, they will be expected to conform the bathroom to Section 18-84(c) as part of said renovations.

ORDER

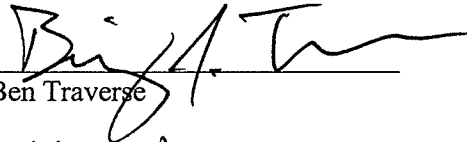
Accordingly, it is hereby ORDERED:

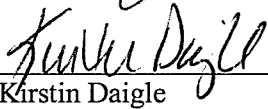
6. The request of petitioners Jon and Jennifer Woods for a variance from Section 18-84(c) related to ventilation in the bathroom is **GRANTED** as set forth herein and subject to the following condition:

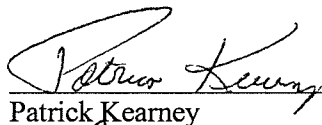
(a) To ensure that any subsequent purchaser of the property has notice of the conditions placed by this Board in granting a variance, petitioners shall cause a copy of these Findings of Fact, Conclusions of Law, and Order to be recorded and indexed in the Land Records of the City of Burlington.

DATED at Burlington, Vermont this 20th day of April, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Kirstin Daigle


Patrick Kearney


Jason L'Ecuyer



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

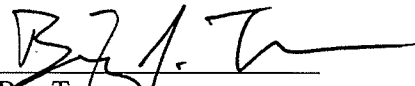
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traversa
Board Chair

cc: Nick Boyle
Samantha Knight
Jennifer Ovitt, Appletree Bay Property Management

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

**In re: Request for Hearing of NICK BOYLE)
And SAMANTHA KNIGHT Regarding)
Withholding of Security Deposit by) CITY OF BURLINGTON
Nineteen Twenty One S. Willard St LLC) HOUSING BOARD OF REVIEW
For Rental Unit at 19-21 So. Willard St,)
Apt. 5)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Nick Boyle and Samantha Knight were present and testified. Respondent Nineteen Twenty One S. Willard St LLC was represented by Jennifer Ovitt who testified on their behalf. Also appearing and testifying as witnesses were Kit Burkich and William Burrell.

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

FINDINGS OF FACT

1. Respondent Nineteen Twenty One S. Willard St LLC is the owner of a rental unit, 19-21 So. Willard Street, Apt. 5, in the City of Burlington which is the subject of these proceedings. Jennifer Ovitt from Appletree Bay Property Management manages the property.
2. Petitioners Nick Boyle and Samantha Knight moved into the rental unit on May 1, 2015 under the terms of a written lease.
3. Petitioners paid a security deposit of \$900.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioners vacated the apartment on December 18, 2015; rent was paid through December 31, 2015. The parties provided conflicting testimony as to when respondent knew petitioners had vacated. The Board specifically finds the vacate date to be December 31, 2015. The Board found Jennifer Ovitt to be credible as to the date on which respondent knew the apartment was empty.

5. On January 13, 2016, respondent sent a written statement to petitioners' forwarding addresses in conformance with ordinance requirements. Said statement itemized one deduction of \$1150.00 for the extermination of bed bugs. Interest in the amount of \$0.45 was credited to the deposit.

6. On November 3, 2015, Samantha Knight's father informed Jennifer Ovitt by email that petitioners, who were seen by physicians for insect bites, discovered bed bugs in their apartment. Mr. Knight requested that respondent have the apartment inspected and cleaned. On November 4, PestPro inspected petitioners' apartment and found 3 bed bugs in the unit; the next day, the rest of the apartments in the building were checked and no bed bugs, or evidence of them, were found in the other units. PestPro treated petitioners' apartment with thermal remediation.

7. Respondent withheld petitioners' entire deposit because they believed the bed bugs in the apartment were attributable to petitioners: the building had no previous bed bugs and bed bugs were only found in petitioners' apartment. Petitioners believed the bed bugs were coming in through the walls.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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 certified 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). Proper notice was provided.

11. The entire deposit was withheld for the cost to have PestPro eliminate bed bugs found in petitioners' apartment. Sec. 18-107 of the Minimum Housing Code provides that owners of a dwelling unit are responsible for the extermination of any insects, except when the infestation is in one dwelling unit only and is the sole result of a single occupant's action **as determined by a code official** (emphasis added). Respondent provided no testimony or evidence that a code official had determined that the bed bugs were the result of petitioners' action. Therefore, the Board is required to conclude that the cost to exterminate the bed bugs was respondent's responsibility.

ORDER

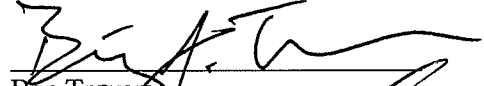
Accordingly, it is hereby ORDERED:

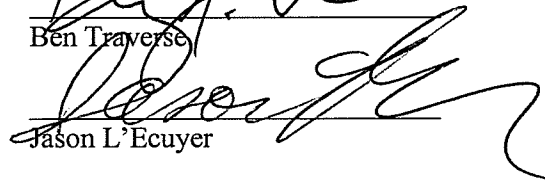
12. Petitioners Nick Boyle and Samantha Knight are entitled to recover from respondent Nineteen Twenty One So. Willard St LLC the following amounts:

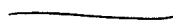
- a) \$900.45, the principal amount of the security deposit, plus interest, improperly withheld after January 14, 2016; and
- b) Additional interest of \$0.006 per day from January 15, 2016 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 20th day of April, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

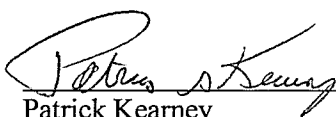

Ben Traverse


Jason L'Ecuyer



Kirstin Daigle

I respectfully dissent from the majority's decision.



Patrick Kearney

16634560.1



HOUSING BOARD OF REVIEW

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CITY OF BURLINGTON

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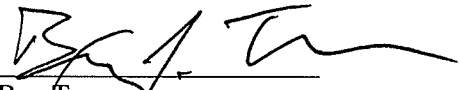
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DATED 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travers
Board Chair

cc: Lawrence Johnson Jr.
Kalsang GGT

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

**In re: Request for Hearing of LAWRENCE)
 JOHNSON JR Regarding Withholding of) CITY OF BURLINGTON
 Security Deposit by KALSANG GGT for) HOUSING BOARD OF REVIEW
 Rental Unit at 217 No. Willard Street)**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Lawrence Johnson, Jr. was present and testified. Respondent Kalsang GGT was also present and testified. Also appearing and testifying as a witness was Cody Burrows. This case was originally heard on January 19, 2016 without Mr. Kalsang being present and an order was issued on February 24, 2016. Upon receiving the order, Mr. Kalsang contacted the Board, stating he was unaware of the January 19 hearing because he was out of the country when the written notice of hearing was sent to him. Mr. Kalsang provided documentary evidence of his travel dates and the Board concluded he had no way of knowing about the January 19 hearing. Consequently, the Board reheard the case on April 4, 2016.

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

FINDINGS OF FACT

1. Respondent Kalsang GGT is the owner of a rental unit, 217 No. Willard Street, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Lawrence Johnson, Jr. moved into the rental unit under the terms of a written lease in February, 2012. Petitioner paid a security deposit of \$1190.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
3. On October 28, 2015, petitioner provided written notice to respondent that he was vacating the property on December 31, 2015. However, petitioner vacated the apartment on November 26, 2015

claiming that respondent agreed to an earlier vacate date of December 1. Respondent denied agreeing to an earlier vacate date of December 1.

4. On December 7, 2015, respondent sent a letter, by certified mail, to petitioner at the address of the rental unit. The letter was forwarded by the post office to petitioner's new address and on December 22, petitioner received it. Respondent's letter informed petitioner that the entire deposit was being withheld for late fees and damages in the apartment. The letter only provided a general description of the damages and did not itemize the deductions. In addition respondent's letter did not inform petitioner of his right to request a hearing to dispute the withholding of the deposit.

6. Interest was not credited to the deposit.

7. Petitioner disputed that he caused any damage in the unit beyond normal wear and tear. In addition, petitioner argued that respondent willfully withheld the deposit to retaliate against him for calling the Code Enforcement Office to report a lack of heat in the unit. Respondent denied that he withheld the deposit in retaliation; respondent stated he withheld the deposit for December rent. The Board finds respondent's testimony to be credible and finds the deposit was withheld for unpaid rent, not in retaliation for petitioner filing a complaint with the Code Enforcement Office.

CONCLUSIONS OF LAW

8. 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.

9. 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.

10. 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 certified mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a proper 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).

11. A landlord who decides to retain all or part of a security deposit must comply with 3 specific requirements of the ordinance: the deposit must be returned within 14 days of the date the tenant vacated or abandoned the rental unit with a written statement itemizing any deductions; the statement must contain notice of the tenant's right to appeal to the Housing Board of Review; and the statement must be hand-delivered or sent by mail.¹ See *Lieberman v. Circe*, No. S21-13 Cncv (Crawford, J., March 27, 2013) and Minimum Housing Code Sec. 18-120(c). The Vermont Supreme Court required the literal enforcement of these requirements in *In re Soon Kwon*, 189 Vt 598 (2011). Accordingly, a landlord who fails to meet all of these requirements forfeits the security deposit. In this case, respondent failed to comply with the notice requirements by failing to include petitioner's appeal rights in the statement. In addition, respondent's statement did not itemize how much was being withheld for each claim of damage. Therefore, the Board concludes respondent forfeited the right to withhold any part of the deposit.

12. If the failure to return the security deposit with a statement within 14 days is willful, the landlord is liable for double the amount wrongfully withheld. Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Petitioner argued that his deposit was willfully withheld in retaliation for filing a complaint with the city's Code Enforcement Office. The Board has found that respondent withheld petitioner's deposit for December rent, not in retaliation for petitioner making a complaint to the Code Enforcement Office. Therefore, the Board concludes that the failure to return the deposit was not willful.

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

13. Petitioner is entitled to recover interest on the security deposit. Minimum Housing Code Sec. 18-120(c). The Housing Code requires that the security deposit be held by the owner in an interest-bearing account with an interest rate equivalent to a current Vermont bank passbook savings account. Sec. 18-120(a). The Board applies the interest rate currently found in most bank passbook savings accounts – 0.25% simple annual interest.

ORDER

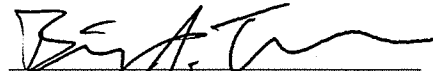
Accordingly, it is hereby ORDERED:

14. Petitioner Lawrence Johnson Jr. is entitled to recover from Kalsang GGT the following amounts:

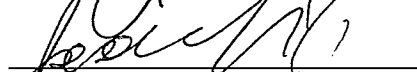
- a) \$1190.00, the principle amount of the security deposit improperly withheld after December 10, 2015;
- b) Interest in the amount of \$11.41 on the entire deposit for the period February 1, 2012 through December 10, 2015; and
- c) Additional interest of \$0.008 per day from December 11, 2015 until such date as the amount improperly withheld is returned to petitioner.

DATED at Burlington, Vermont this 20th day of April, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Jason L'Ecuyer



Kirstin Daigle



Patrick Kearney



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 4/20/16

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Marie & Peter Wall
George Harrington

**In re: Request for Hearing of MARIE and)
PETER WALL Regarding Withholding of) CITY OF BURLINGTON
Security Deposit by GEORGE) HOUSING BOARD OF REVIEW
HARRINGTON for Rental Unit at 142)
Sandra Circle)**

The above-named hearing came before the Housing Board of Review on April 4, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioners Marie and Peter Wall were present and testified. Respondent George Harrington was also present and testified.

FINDINGS OF FACT

- 1

6. Both parties testified concerning the tub handle which appeared as a \$63.00 deduction on the itemized statement. The tub handle was replaced 12-18 months prior to petitioners moving out of the apartment after they complained about it. The handle fell off again and petitioners replaced it, but at the end of the tenancy it broke again; petitioners purchased and installed a new handle and left it in the apartment for respondent. Respondent replaced the handle purchased and installed by petitioners at a cost of \$63.13, as evidenced by a receipt from The Home Depot.

7. Both parties testified concerning the cracked bathroom sink counter which appeared as a \$55.00 deduction on the itemized statement. The counter cracked during petitioners' tenancy. Respondent attributed the damage to petitioners. According to petitioners, respondent admitted in conversation that the counter was improperly installed (it was not level) which resulted in it cracking when they lightly leaned on the edge of it. Respondent denied making this comment and speculated that the counter broke upon being forcefully hit.¹

8. Respondent charged petitioners \$50.00 for his time to make the repairs.

CONCLUSIONS OF LAW

9. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

10. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

11. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the

¹ Respondent supported his testimony by a demonstration that involved his repeatedly hitting the table with excessive force. Accordingly, respondent's testimony on this point is difficult to hear on the audio recording.

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 certified 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). Proper notice was provided.

12. Based on the evidence and testimony, the Board concludes the deductions were not proper. The broken tub handle was attributable to normal wear and tear. Moreover, the Board credits petitioners' testimony that the cracked counter resulted from it not being properly installed. Consequently, both the cost of materials and the deduction for respondent's labor to make repairs were not proper.

ORDER

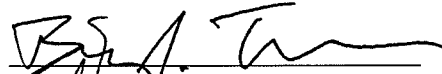
Accordingly, it is hereby ORDERED:

13. Petitioners Peter and Marie Wall are entitled to recover from respondent George Harrington the following amounts:

- a) \$168.00 of the principal amount of the deposit improperly withheld after March 14, 2016; and
- b) Additional interest of \$0.001 per day from March 15, 2016 until such date as the amount improperly withheld is returned to petitioners.

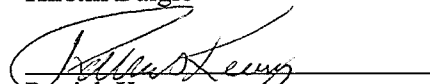
DATED at Burlington, Vermont this 20th day of April, 2016.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse


Jason L'Ecuyer


Kirstin Daigle


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