



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

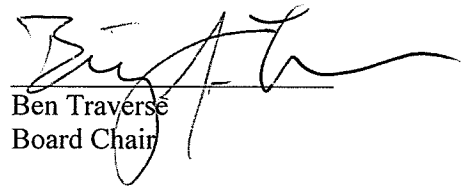
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Board Chair

cc: Rick Bove
Ita Meno
Patricia Wehman

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

**In re: Request for Hearing of RICK BOVE)
 Regarding the Rental Property at) CITY OF BURLINGTON
 3-11 George 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 March 20, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Rick Bove was present and testified. Minimum Housing Inspector Ita Meno and Patricia Wehman, Case Manager for the Code Enforcement Office, were also present.

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. The property, 3-11 George Street, in the City of Burlington which is the subject of these proceedings, is owned by 3-11 ½ George Street LLC. Rick Bove helps manage the property.
2. On January 13, 2017, Minimum Housing Inspector Ita Meno conducted a re-inspection of the property. In her Order dated January 30, 2017, Ms. Meno noted 38 minimum housing code violations still existed at the property. The order directed the property owner to make repairs by February 24, 2017 when the property was scheduled for a second re-inspection. Ms. Meno was unable to inspect one of the units, apartment 3A, at the time of the re-inspection, as well as at the initial inspection, so it is unknown whether or not there are violations in that unit.
3. On March 6, 2017, Rick Bove appealed the re-inspection order. The basis of Mr. Bove's appeal is that he plans to redevelop the property and is loath to put money into the property when it is going to be completely renovated beginning in mid-June.¹ Mr. Bove did not dispute that the condition of

¹ Mr. Bove's argument is the same one the Board considered in a case brought by him in April, 2014 related to the same property.

the property is as noted on the minimum housing order. According to Mr. Bove, all life safety issues have been resolved.²

4. As a result of Rick Bove's request for an extension to make repairs, the Code Enforcement Office identified 18 items from the January 30, 2017 order which needed immediate follow-up, and which would not be granted an extension:

Item 2: plumbing fixture incorrectly installed or maintained; drip at sink. 11 ½ George St

Item 3: interior wall/ceiling not maintained in sound and sanitary condition and in good repair; failed caulking around tub, and tub surround pulling away from wall. 11 ½ George St

Item 6: electrical equipment installed or maintained incorrectly; broken outlet. 11 George St

Item 7: electrical appliance installed or maintained incorrectly; missing switch plates and outlet covers. 11 George St

Item 10: defective cooking equipment; right rear burner not igniting. 11 George St

Item 12: exterior windowpane cracked, broken or absent. 3 George St

Item 13: kitchen spout not repaired in skilled manner; gorilla tape used to hold spout together. 3 George St

Item 14: interior equipment not maintained in sound and sanitary condition and in good repair; broken door not repaired. 3 George St

Item 16: exterior windowpane cracked, broken or absent; multiple broken windows throughout building, visible from exterior. 3-11 George St

Item 18: lead paint responsibility not met; annual cleaning of common area does not appear to have been completed. 3-3A George St

Item 20: all or part of rental property unavailable for scheduled inspection; unable to access unit 3A.

Item 21: equipment or device incorrectly installed or maintained; broken/cracked toilet seat.

² The Board notes that there was 1 fire safety issue (item 35) cited in the January 30 order. The Board does not have authority to hear appeals on fire safety issues; appeals of fire safety issues must go to the Public Works Commission.

7 George St

Item 31: equipment or device incorrectly installed or maintained; cracked/broken toilet seat.

9 George St

Item 32: plumbing fixture incorrectly installed or maintained; cracked/broken sink. 9 George St

Item 35³: path of egress is obstructed or otherwise unsafe; locking hasp on door that must be removed. 9 George St

Item 36: defective cooking equipment; existing oven is non-operational. 9 George St

Item 37: plumbing drain with leak or defect. 9 George St

Item 38: electrical appliance installed or maintained incorrectly. 9 George St

The Code Enforcement Office ordered the above-numbered items to be repaired by March 6, 2017.

5. The Code Enforcement Office is strongly in favor of the property being renovated; however, Rick Bove has talked about redeveloping and renovating the property for at least 3 years. Consequently, the Code Office feels the property should be vacated if petitioner is not going to make repairs. Thus far, there have been no permits issued for the renovation/redevelopment of the property. Although the Code Office is willing to grant an extension for some repairs, they identified 18 critical items (outlined above) that need to be repaired immediately.

CONCLUSIONS OF LAW

6. 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 argues that the situation is unique because he is on the verge of totally renovating the property so that it does not make sense to put money into the property.

³ The appeal of this item must be directed to the Public Works Commission.

However, petitioner has talked about renovating and/or redeveloping the property for years with nothing changing, and currently, there are no permits for work at the property so it is difficult to conclude that the situation is unique.

7. Even if the above-stated 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). The Board concludes this standard has not been met, and therefore, denies petitioner's request for a variance. Additionally, the Code Enforcement Office identified 18 items that need immediate action so that the tenants' welfare is not harmed; consequently the Board will order that these items be repaired within 15 days of the Board's decision. However, with respect to the other items cited in the Order, the Board will grant petitioner an extension of time to comply. If the building has been demolished by then, or it is vacant, this portion of the Order will be moot.

ORDER

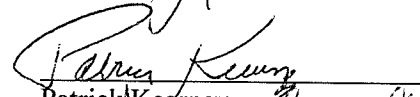
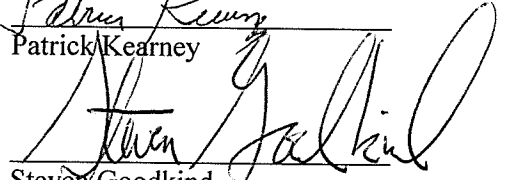
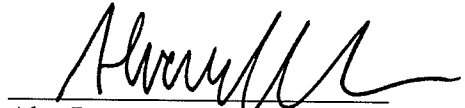
Accordingly, it is hereby ORDERED:

8. The findings and required remedies for items 2, 3, 6, 7, 10, 12, 13, 14, 16, 18, 20, 21, 31, 32, 35, 36, 37 and 38 as set forth in the minimum housing order dated January 30, 2017 are hereby incorporated into this decision and Order. The Code Enforcement Office shall schedule these items for reinspection no earlier than 15 days from the date of this Order.

9. The findings and required remedies for items 1, 4, 5, 8, 9, 11, 15, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33 and 34 as set forth in the minimum housing order dated January 30, 2017 are hereby incorporated into this decision and Order, except with respect to the compliance date. The Code Enforcement Office shall schedule these items for reinspection no earlier than June 30, 2017.

Dated at Burlington, Vermont this 18th of April, 2017.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Traverse
Patrick Kearney
Steven Goodkind
Alec Bauer
Josh O'Hara



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

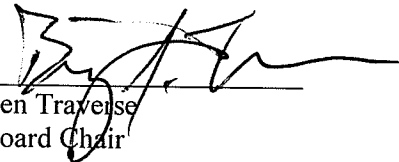
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 4/18/17

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Ben Travelse
Board Chair

cc: Soon Kwon
William Ward
Patricia Wehman

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

**In re: Request for Hearing of SOON KWON)
 Regarding the Rental Property at) CITY OF BURLINGTON
 41 So. Willard Street, Apt. 1) HOUSING BOARD OF REVIEW**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on March 20, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney, Steven Goodkind, Alec Bauer and Josh O'Hara were also present. Petitioner Soon Kwon was present and testified. William Ward, Director of the Code Enforcement Office, testified via telephone conference call. Patricia Wehman, Case Manager for the Code Enforcement Office, and Henry Sollitt, a tenant in the unit, were also present and 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. Petitioner Soon Kwon is the owner of the rental property at 41 South Willard Street in the City of Burlington which is the subject of these proceedings.
2. On February 9, 2017, William Ward conducted a complaint-based inspection of the property. In his Order dated February 14, 2017, Mr. Ward noted 3 minimum housing code violations in Unit 1 at the property: the lack of adequate heat in the northwest and southwest bedrooms and water leaking from the ceiling in the northwest bedroom which has also caused damage to the ceiling. The Order directed petitioner to make repairs by February 21, 2017 when the property was scheduled for re-inspection.
3. On March 2, 2017, petitioner appealed the Order. Petitioner also challenged the Code Enforcement Office's denial of requests for extensions to comply with the Order.
4. Burlington Code of Ordinances (BCO), Sec. 18-86 requires every dwelling unit to be provided with heating facilities capable of maintaining a room temperature of 65 degrees Fahrenheit 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 argued

that while the heating system itself is capable of maintaining a room temperature of 65 degrees, the structure of the house makes it impossible to maintain all rooms at a temperature of 65 degrees.

Petitioner also argued that space heaters he provides to the tenants help to keep the bedrooms at or above 65 degrees. William Ward testified that he consulted with the Fire Marshall's Office about the use of space heaters, and was told that they are considered fire hazards and that long-term use is not recommended. According to petitioner, the rental unit furnace was replaced around 1½ years ago.

5. Temperature data loggers were set in the northwest and southwest bedrooms by Code Enforcement on 5 occasions: 1/30/17, 2/8/17, 2/9/17, 2/14/17 and 3/3/17. The loggers were set at a point higher than 3 feet above the floor and further than 3 feet from the exterior walls. The loggers indicated that the temperature in the bedrooms was consistently below 65 degrees. Supporting testimony indicates that the lower readings resulted from, at least in part, contracting work on exterior walls.

6. On June 30, 2016, this Board issued an order to petitioner related to the property at issue, which addressed the property's heating system, among other cited violations. That order, in part, required petitioner to obtain and present to the Code Enforcement Office a detailed, independent verification from a third-party professional indicating that the heating system was sufficiently heating the property. Petitioner did not submit any such verification into evidence at this hearing.

7. BCO Sec. 18-72 requires interior walls and ceilings to be maintained in sound condition and good repair; peeling paint and other deteriorated or damaged surface conditions must be eliminated. The ceiling in the northwest bedroom is damaged from water leaking from the apartment above unit 1. Petitioner blames the problem on the tenants living in the upstairs apartment who, he claims, do not use the shower curtain in the bathroom properly, thereby allowing water to leak into the northwest bedroom of unit 1. Petitioner stated that he ordered a new shower unit to deal with the problem. In the past, petitioner has roughly patched the water mark on the ceiling when a leak occurs; petitioner stated the last time he patched the ceiling was approximately 1-2 months ago. There has been no evaluation about the source of the leak from a professional plumber. William Ward testified that an evaluation from a licensed plumber should be required.

8. Henry Sollitt, a tenant in unit 1, testified that while he had voiced concerns about the condition of the unit to petitioner since he moved in in August, 2016, there has been no resolution to the problems. Mr. Sollitt occupies the northwest bedroom in unit 1. Mr. Sollitt confirmed that the heat in his bedroom has been inadequate for most of the heating season. Although Mr. Sollitt confirmed that petitioner provided him with a space heater to use in his bedroom, he has not used it at night because he feels it is a fire hazard. With respect to the water leak, Mr. Sollitt testified that it is a recurring problem that has not been solved. At the time of the hearing, there was a bucket with 3 inches of water in it sitting on his bedroom floor due to the water leak. As the water appears to be leaking from an upstairs shower unit, it is Mr. Sollitt's belief that the leaking water is used shower water, presenting a serious risk to his health and safety. Mr. Sollitt's viewpoint is that petitioner has continually failed to acknowledge the problems in the unit and takes great care to blame others for the deficiencies in the unit.

9. Petitioner also appeals the Code Enforcement Office's denial of requests for extensions to make repairs and to reschedule inspections. In some instances, petitioner's request to reschedule an inspection was received on the date of the inspection. The Code Enforcement Office denied petitioner's requests and proceeded to conduct reinspections, having been provided access to the unit by the tenants. The complaints at issue in this hearing date back to December 20, 2016. As stated above, related complaints date back much further. Over the months and years, multiple reinspections have occurred and repairs have not been made or completed.

CONCLUSIONS OF LAW

10. The Board is vested with the authority to: "[R]everse 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, and to that end, the board shall have all the powers of the inspector." BCO Sec. 18-42(d).

11. Petitioner argues that Sec. 18-86 only requires that the unit's heating system itself be capable of maintaining a room temperature of 65 degrees, even if the heating facility is not actually maintaining a room temperature of 65 degrees in all the rooms. In addition, petitioner argues that a space heater is part of the heating facilities. The Board finds petitioner's arguments to be baseless. While the ordinance

could be more artfully worded, the intent of Burlington's Minimum Housing Code is to establish minimum standards for the protection of the health and safety of tenants. If a habitable room is unable to maintain a temperature of at least 65 degrees, these minimum standards are violated, regardless of how powerful the heating system itself may be. An impermanent heat source, such as a space heater, is not an adequate remedy and cannot be considered as part of a property's heating facilities.

12. With respect to the ceiling in the northwest bedroom of Unit 1, there is no dispute that there is a continuing problem with water leaking from the ceiling. As a result, the ceiling in the northwest bedroom has become deteriorated and needs to be repaired. Petitioner believes that the leak is being caused by the upstairs' tenants not using the shower curtain properly, but he has not had a plumber assess the problem. Although the February 14, 2017 order is limited to the damage in the ceiling, rather than an underlying plumbing problem, this Board has the same authority as the Code Enforcement Office to "make such order, requirement, decision or determination as ought to be made."

13. Petitioner also took issue with the Code Enforcement Office's denial of his requests for extensions for inspection dates. Based on the evidence, the Board concludes it was reasonable for the Code Enforcement Office to deny petitioner's requests for extensions.

ORDER

Accordingly, it is hereby ORDERED:

14. The Minimum Housing Order dated February 24, 2017 is hereby AFFIRMED. Additionally, petitioner must identify the source of the leak in unit 1 and fix it in a professional manner. Petitioner has thirty (30) days to make repairs and bring the property into compliance with this Order.

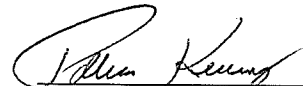
15. Up and until petitioner brings the property into compliance with this Order, he shall be required to expressly notify any new tenant(s) of the existence of this Order.

Dated at Burlington, Vermont this 18th of April, 2017.

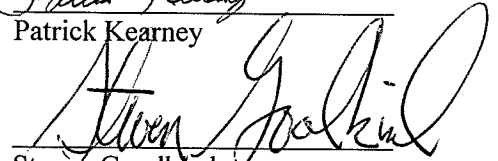
CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse



Patrick Kearney



Steven Goodkind



Alec Bauer



Josh O'Hara