



**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**

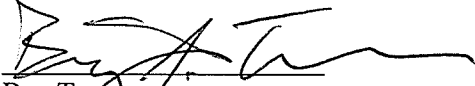
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 2/24/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Richard Rooney  
Bill Ward  
Tim Ahonen  
Patti Wehman

**In re: Request for Hearing of RICHARD )  
ROONEY Regarding the Rental ) CITY OF BURLINGTON  
Rental Property at 211 Church 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 Richard Rooney is the owner of a rental unit, 211 Church Street, in the City of Burlington.

2. On December 24, 2015, Minimum Housing Inspector Tim Ahonen conducted a routine inspection of the premises. In his Order dated December 28, 2015, Mr. Ahonen noted a minimum housing code violation in the basement at the property; specifically, there is a white PVC pipe connected to the main wastewater line which acts as an overflow for waste. The pipe is open at the bottom and on the ground under the pipe is an open-topped, 55 gallon plastic drum to catch the waste. 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 free from obstructions, leaks and defects.

3. On December 17, 2015, petitioner requested a variance from the code standard related to the plumbing.

4. Many years ago a plumber installed a WYE fixture with a one way flapper to the main wastewater line at the premises in order to divert any backup of sewage into an open 55 gallon drum in

the lower basement. The main sewer line has a history of clogging and when that first happened, the sewage overflowed into the toilet in the basement apartment and onto the floor. With the WYE in place, if the main line gets clogged, the sewage is diverted into the drum in the lower basement and an alarm goes off. The tenant in the basement apartment is expected to contact petitioner when the alarm goes off. Petitioner then has Roto Rooter auger the main line to unclog it; Roto Rooter also pumps the contents of the 55 gallon drum back into the sewer and cleans and sanitizes the entire area. Petitioner estimated that Roto Rooter augers the line approximately twice a year. Petitioner admitted the system is not perfect and could be improved; he was open to suggestions for addressing the problem. Petitioner presented no evidence indicating he has consulted a licensed plumber about fixing the problem.

5. The Code Enforcement Office was not in favor of granting a variance for petitioner's current set-up because of the potential health issues related to having exposed sewage in the drum. In addition, the system relies on the tenant contacting petitioner if the alarm goes off; however, if the tenant is not at home, no one will be aware that sewage is being diverted into the drum.

### **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 has not met this standard. Petitioner provided no evidence by a licensed plumber or other professional that the plumbing connection could not be fixed for a reasonable sum.

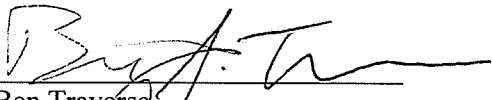
**ORDER**

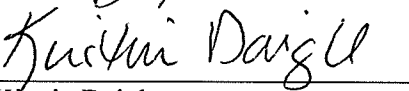
Accordingly, it is hereby ORDERED:

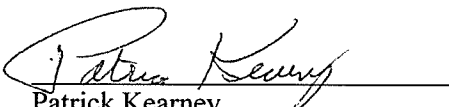
7. Petitioner's request for a variance from Section 18-79 of the Minimum Housing Code related to plumbing connections is DENIED.

DATED at Burlington, Vermont this 24<sup>th</sup> day of February, 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

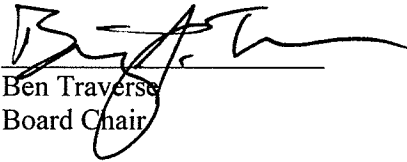
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Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 8/2/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Chris Khamnei  
Patricia Wehman  
Tim Ahonen

**In re: Request for Hearing of CHRIS )  
KHAMNEI Regarding the Rental ) CITY OF BURLINGTON  
Property at 10-12 Intervale Avenue ) 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, 10-12 Intervale Avenue, in the City of Burlington which is the subject of these proceedings.

2. On December 23, 2015, Code Enforcement Officer Tim Ahonen conducted a complaint based inspection of the property. In his order mailed on December 28, 2016, Mr. Ahonen noted several minimum housing code violations, including deteriorated exterior painted surfaces.

3. 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 is no dispute that the exterior has flaking and chipped paint. Petitioner was aware that he had until May 31, 2016 to paint those areas. Currently, the property is vacant.

4. Petitioner was aware back in December that he had until May 31 to paint. The Code Enforcement Office scheduled a reinspection of the property on June 10, 2016. On May 23, 2016, petitioner requested an extension to August 15, 2016 to have the exterior of the property painted. The Code Enforcement Office denied his request and he appealed that denial to this Board.

5. Petitioner has 3 properties (including the subject property) which were required under Minimum Housing orders to be painted by June 1, 2016. Work has been done on 2 of the properties, but no work has been done on the subject property. Petitioner has a crew of 6 painters and each property is taking 1 month to paint. Petitioner does not want to pull his crew from working on another property to work on the subject property because of the cost to reset the equipment and the disruption it would cause to his crew. He estimates that by the end of July or beginning of August his crew will move to the subject property. Consequently, he estimates painting can be finished by September 1, if not sooner.

6. Although it is the general practice of the Code Enforcement Office to grant a 30-day extension, Patrician Wehman believes an extension to September 1 is a long time, particularly since some paints chips found at the property tested positive for lead. Petitioner disputed the allegation of lead paint at the property and objected to Ms. Wehman's testimony because the test results were not available to him; in addition, he claims that the exterior paint is latex.

### **CONCLUSIONS OF LAW**

7. Petitioner has requested that the Board extend the date by which he needs to comply with the Minimum Housing Order with respect to painting the exterior of the property. The Board views this request as a request for a variance from the code standard related to the date by which the property must be painted. To grant 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. 18-120(c). 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....

8. The Board concludes that petitioner has not met the standards required in order for the Board to grant a variance. Petitioner has known for almost 6 months that the property needed to be painted by June 1, 2016. His request is based in part on the disruption and cost to move his crew from one property to another one. However, he offered no testimony as to why he did not hire separate crews for each property, knowing that they all needed to be painted by June 1. Additionally, the ordinance presumes that paint on all dwellings constructed prior to January 1, 1978 is lead-based unless the paint was found not to be lead-based by a state-certified lead testing inspector who has issued a report to the owner of their findings. Minimum Housing Code Sec. 19-112(b). Petitioner provided no information to rebut this presumption. Therefore, the Board concludes that granting a variance to September 1 may be detrimental to the health and safety of the general public.

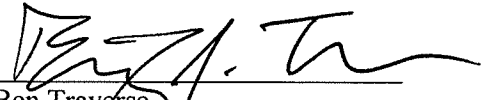
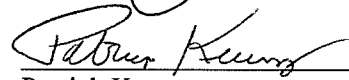
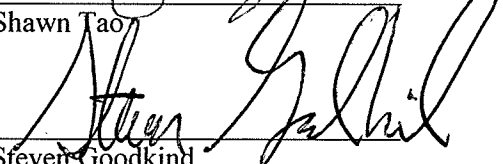
### **ORDER**

Accordingly, it is hereby ORDERED:

9. The request of petitioner for an extension to September 1, 2016 to paint the exterior of the building is DENIED.

DATED at Burlington, Vermont this 2<sup>nd</sup> day of August, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Patrick Kearney  
Shawn Tao  
Steven Goodkind



**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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DATED 2/24/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Orchard Terrace Assoc.  
Bill Ward  
Kim Ianelli  
Patti Wehman

**In re: Request for Hearing of ORCHARD )  
TERRACE ASSOCIATES LLP Regarding ) CITY OF BURLINGTON  
the Rental Property at 24-28 Orchard ) HOUSING BOARD OF REVIEW  
Terrace, Unit 26B )**

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

1. Petitioner Orchard Terrace Associates LLP is the owner of a rental unit, 24-28 Orchard Terrace, in the City of Burlington. Rick Sharp manages the property.

2. On December 11, 2015, Minimum Housing Inspector Kim Ianelli conducted a follow up inspection of the premises. In her Order dated December 28, 2015, Ms. Ianelli noted several minimum housing code violations at the premises, including allegedly insufficient ventilation in the bathroom of Unit 26B (Item 5 of the order). Section 18-84 of the Minimum Housing Code requires every bathroom or toilet room to have 1 window opening to the outdoors or a fan or mechanical device vented to the outdoors of sufficient size to prevent the buildup of moisture. The section goes on to provide that for a window to be of sufficient size, it must be not less than 2 square feet.

3. On December 30, 2015, Rick Sharp appealed Item 5 of the order of December 28. Mr. Sharp argued that the bathroom is in compliance with the code standard because it has a sufficiently sized window that opens to the outdoors.

4. The window in the bathroom of Unit 26B measures 29 inches by 17 inches; consequently, it is approximately 3.44 square feet and meets the minimum window size for a bathroom window. The window is openable, but the bottom of the window is 5.5 feet off the ground. In addition, the window is recessed approximately 2 feet from the wall. Therefore, in order to open the window, a tenant either needs to stand on the vanity or a step ladder provided by petitioner. In order for the window to stay open, there is a chain and hook attached to the window that then needs to be hooked to a vent on the ceiling above the window. According to petitioner, the bathroom's small size prohibits the installation of some kind of pulley system to make opening the window easier. Additionally, petitioner contends that there is no way to install a built-in step to reach the window due to the size of the bathroom. The apartment has a dehumidifier in it.<sup>1</sup> Petitioner denied that there was any mold in the bathroom, despite the claims of a tenant who was recently evicted. There was evidence of some mold on the bathroom floor when it was inspected, but petitioner claimed the floor was damaged by the tenant who deliberately allowed the floor to get wet. After the inspection, the linoleum floor in the bathroom was replaced with tile and any mold was cleaned up. The parties agreed that the bathroom is free of mold at this time.

5. The Code Enforcement Office requested that the Board uphold the order and require that either a fan be installed in the bathroom or the window be made more easily openable. William Ward argued that the window is not easily opened since it requires either standing on the vanity (not a safe option in his opinion) or getting the step ladder from the other room in order to open it.

#### **CONCLUSIONS OF LAW**

6. The Board has the power to reverse or affirm, in whole or in part, any order of the minimum housing inspector, and to make such order, requirement, decision or determination as ought to be made. Minimum Housing Code, Section 18-42(d).

7. As regarding ventilation via a bathroom or toilet room window, the express language of Section 84 of the Minimum Housing Code is limited to merely requiring that the window be openable to

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<sup>1</sup> As a condition of a variance granted in 1987, allowing the rental unit in the cellar, the landlord is required to have a dehumidifier in the apartment.

the outdoors and not less than 2 square feet. Viewed in the context of that limited language, the Board concludes the basement apartment is not in violation of the Code: it measures 3.44 square feet and opens to the outdoors. The Board acknowledges, however, that there are issues related to the ease of opening the bathroom window and, while not requiring that a fan be installed at this time, the Board strongly recommends that this course of action be followed.

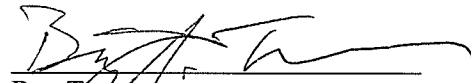
**ORDER**

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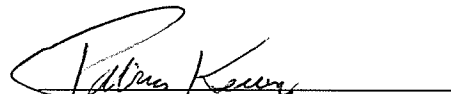
8. Item 5 of the Minimum Housing Order dated December 28, 2015 related to ventilation in the bathroom of the basement apartment (Unit 26B) is hereby REVERSED.

DATED at Burlington, Vermont this 24<sup>th</sup> day of February, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Kirstin Daigle

  
Patrick Kearney

  
Jason L'Ecuier



**HOUSING BOARD OF REVIEW**

**City of Burlington**

149 Church Street Room 11

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**CITY OF BURLINGTON**

**NOTICE OF DECISION**

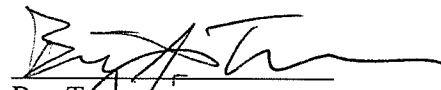
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DATED 2/24/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse  
Board Chair

cc: Benjamin Macdonald  
Eagle/North St LP

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

**In re: Request for Hearing of BENJAMIN        )  
          MACDONALD Regarding Withholding of ) CITY OF BURLINGTON  
          Security Deposit by EAGLE/NORTH ST ) HOUSING BOARD OF REVIEW  
          LP for Rental Unit at 194 North St, #5    )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on January 19, 2016. Board Chair Ben Traverse presided. Board Members Kirstin Daigle, Jason L'Ecuyer and Patrick Kearney were also present. Petitioner Benjamin Macdonald was present and testified. Respondent Eagle/North St LP, although notified of the hearing and the opportunity to be heard, was not 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. Respondent Eagle/North St LP is the owner of a rental unit, 194 North Street, Apt. 5, in the City of Burlington which is the subject of these proceedings.
2. Petitioner Benjamin Macdonald moved into the rental unit on June 1, 2013 under the terms of a written lease. Monthly rent was \$905.00.
3. Petitioner paid a security deposit of \$890.00 to respondent. Petitioner was to receive back his security deposit at the end of the lease minus any amounts withheld for damages.
4. Petitioner vacated the apartment on November 28, 2015. In accordance with ordinance requirements, respondent returned all of petitioner's deposit (including interest) with the exception of \$75.00 which was withheld for "washing walls." Petitioner disputed the deduction and provided evidence that the apartment was thoroughly cleaned and neat when he moved out.

### **CONCLUSIONS OF LAW**

5. 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.

6. 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.

7. 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). Timely and proper notice was provided.

8. Petitioner's evidence is uncontroverted. The apartment was clean when petitioner moved out of it and the deduction for washing walls was not proper.

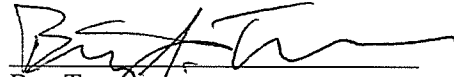
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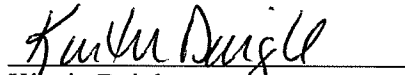
9. Petitioner Benjamin Macdonald is entitled to recover from respondent Eagle/North St LP \$75.00, the principal amount of the security deposit improperly withheld after December 12, 2015.

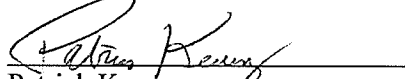
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CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
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