



HOUSING BOARD OF REVIEW

City of Burlington

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HOUSING BOARD OF REVIEW

CITY OF BURLINGTON

NOTICE OF DECISION

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

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

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

DATED 10/10/19

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

Josh O'Hara
Board Chair

cc: Chris Khamnei
William Ward
Kim Ianelli

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

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

ORDER

Accordingly, it is hereby ORDERED:

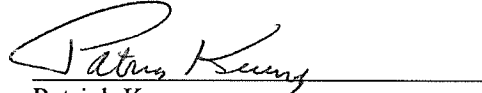
15. The Minimum Housing Order dated June 18, 2019 is AFFIRMED and the request for an extension of time to make the repairs cited in the Order is DENIED.

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


CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Josh O'Hara




Patrick Kearney



Patrick Murphy



Olivia Pena



Betsy McGavisk