



HOUSING BOARD OF REVIEW

City of Burlington

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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: February 8, 2021

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O’Hara
Josh O’Hara
Board Chair

cc: Chris Khamnei (via email & US mail)

Dept. of Permitting & Inspections: Patti Wehman, Steve Cormier, William Ward (via email)

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

**In re: Request for Hearing of CHRIS KHAMNEI)
Regarding the Rental Property at) Appeal of Minimum Housing Order
412 St. Paul Street)**

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on January 19, 2021 and was continued to February 1, 2021; the hearings were held virtually via Zoom. Board Chair Josh O’Hara presided. Board Members Olivia Pena, Charlie Gliserman and Betsy McGavisk were also present. Board Member Patrick Murphy was present for the January hearing, but could not attend the February hearing. He took no part in this decision. Petitioner Chris Khamnei was present and testified. Appearing for the Department of Permitting and Inspections were William Ward, Patti Wehman, Steve Cormier and Cara Simoneau. Also present at the January 19 hearing was Louis Moore; Mr. Moore was not present at the February 1 hearing.

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, 412 St. Paul Street, in the City of Burlington which is the subject of these proceedings.
2. On October 28, 2020, Minimum Housing Inspector Steve Cormier conducted an inspection of the property in response to a complaint received about the property. In his Order dated November 4, 2020, Inspector Cormier noted 21 violations at the property; petitioner was ordered to correct all the violations (with the exception of one of them) by December 2, 2020.

3. Petitioner testified he did not receive the November 4 Order. Cara Simoneau testified that she mailed the Order to petitioner on November 5, 2020. In addition, Steve Cormier emailed his inspection findings to petitioner on October 28, 2020; that email provided a list of the violations and the date for compliance and follow up inspection. Mr. Cormier's email also noted that Cara Simoneau would be mailing the Order to him. In emails from petitioner to Steve Cormier on November 1, November 2 and November 9, petitioner requested additional clarification of the violations and questioned the existence of some of them. Additionally, petitioner's November 9 email specifically refers to Inspector Cormier's report. The Board finds Cara Simoneau's and Steve Cormier's testimony with respect to emailing and mailing the Order to petitioner credible. Additionally, the emails from petitioner to Steve Cormier corroborate that petitioner received the Minimum Housing Order dated November 4, 2020.

4. On December 2, 2020, petitioner requested, and received, an extension to make repairs in the unit. Consequently, the follow-up inspection scheduled for December 2 was re-scheduled for December 16, 2020.

5. On December 16, 2020, Inspector Cormier conducted a re-inspection of the property. In his Order dated December 17, 2020, Inspector Cormier noted that of the 21 violations found at the October 28 inspection, 20 of them were not repaired. In addition, Inspector Cormier noted 6 new violations at the property. The Order required petitioner to repair the violations found at the October 28 inspection by January 4, 2021. The compliance date for the new violations was January 21, 2021.

6. On December 21, 2020, the Clerk for the Board received an email from Patti Wehman, Division Manager, Housing and Code Enforcement, that petitioner had appealed the Minimum Housing Order of December 16, 2020. The Board notes that it did not receive a

written appeal specifying the grounds for the appeal and the relief being requested with respect to this property. Both parties acknowledge that an appeal was taken on or about December 16, 2020.

7. At the hearing on January 19, 2021, petitioner requested that the re-inspection fees of \$225 assessed on December 16, 2020 be waived and that William Ward conduct an inspection of the property to verify any existing violations.

8. At the hearing on February 1, 2021, petitioner conceded the violations, but requested additional time to make the repairs. The violations cited in the December 17, 2020 Order (as numbered in the Order) are:

1. Disconnected smoke detectors
2. Replaced boiler
3. Missing handrail in bulkhead stairway
4. Missing handrail in stairwell to unit 1
5. Missing plate cover in stairwell to unit 1
6. Lack of handle/knob on door
7. Holes in walls in stairwell to unit 1
8. Exterior rotted/missing fascia (south side at attic)
9. Exterior windowpane cracked (south side at attic)
10. Exterior windowpane cracked (west side at attic)
11. Exterior door does not lock securely
12. Missing porch light
13. Ceiling deteriorated/falling down (hallway, floor 2)
14. Missing interior handrail (stairwell to attic)
15. Missing smoke/CO detector (unit 1)
16. Hole in ceiling (bathroom, unit 1)
17. Tub trip lever mechanism falling out/disconnected (bathroom, unit 1)
18. Missing fire extinguisher (kitchen, unit 1)
19. Hole in floor (bathroom, unit 1)
20. Missing lock from door (unit 1)
21. Entry door does not remain closed (unit 2)
22. Ceiling surface peeling (bathroom, unit 2)
23. Missing fire extinguisher (kitchen, unit 2)
24. Missing handles/knobs on door (living room, unit 2)
25. Hole in ceiling (living room, unit 2)
26. Missing door lock (sleeping room, unit 2)

Petitioner requested an additional 30 days to make the repairs.

Conclusions of Law

9. Section 18-42(d) of the Burlington Code of Ordinances (BCO) 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.

10. Section 18-49 of the BCO requires an appeal of a Minimum Housing Order to be made in writing within 30 days of the Order. The written request must specify the ground of the appeal and the relief being sought. Although petitioner ultimately conceded the violations, it is likely the Board would have concluded the appeal of the Minimum Housing Order dated November 4, 2020 was not timely. Here, Mr. Cormier and Ms. Simoneau credibly testified, and the Board finds, that the Order was mailed to petitioner on November 4, 2020, satisfying the service requirement of the Code. BCO § 18-26(a). Allowing for the three days before the Order became effective under the Code, petitioner should have appealed the November 4 Order no later than December 9, 2020. Petitioner's appeal of the November 4 Order was untimely, even had he not conceded the violations.

11. Petitioner's argument that the December 16 reinspection revived his ability to appeal the November 4 Order misunderstands the purpose of a reinspection under the Code. According to § 18-27, the purpose of a reinspection is to determine whether a property order has complied with the initial inspection order. If the order has not been complied with, then the Department of Permitting and Inspections shall take legal action against the property owner unless an extension has been granted or an appeal has been taken. The reinspection procedure does not reopen the validity of the initial order.

12. Petitioner has requested additional time to make the repairs cited in the December 17 Order. At the February 1 hearing, petitioner represented that all “life-safety complaints” have been fixed. Based upon petitioner’s representation, the Board will allow some additional time to correct the life-safety complaints, and more time to correct the less urgent items. The following items (numbered according to the December 17 Order) must be repaired no later than **February 15, 2021**:

1. Disconnected smoke detectors
2. Replace boiler
3. Missing handrail in bulkhead stairway
4. Missing handrail in stairwell to unit 1
5. Missing plate cover in stairwell to unit 1
11. Exterior door does not lock securely
14. Missing interior handrail (stairwell to attic)
15. Missing smoke/CO detector (unit 1)
18. Missing fire extinguisher (kitchen, unit 1)
20. Missing lock from door (unit 1)
21. Entry door does not remain closed (unit 2)
23. Missing fire extinguisher (kitchen, unit 2)
26. Missing door lock (sleeping room, unit 2)

13. The Board considers these items life-safety concerns because they related to the ability to heat the units (Item 2), present a trip-and-fall hazard (Items 3, 4, and 14), present fire-detection and fire-response hazards (Items 1, 15, and 23), the potential for electrocution (Item 5), and present the possibility that tenants will not be able to exclude from the premises or their sleeping rooms unwanted intruders (Items 11, 20, 21, and 26).

14. In accordance with BCO § 18-27, the Department of Permitting and Inspection shall reinspect 412 St. Paul Street within 15 days of February 15, 2021, but no later than 30 days after February 15, 2021.

15. Items numbered 6, 7, 8, 9, 10, 12, 13, 16, 17, 19, 22, 24 and 25 in the December 17, 2020 Order must be repaired by March 1, 2021. In accordance with BCO § 18-27, the

Department of Permitting and Inspection shall reinspect 412 St. Paul Street within 15 days of March 1, 2021, but no later than 30 days after March 1, 2021.

Order

Accordingly, it is hereby ORDERED:

16. The Minimum Housing Order dated December 17, 2020 with respect to violations cited in it is AFFIRMED.

17. Item numbers 1, 2, 3, 4, 5, 11, 14, 15, 18, 20, 21, 23 and 26 in the December 17, 2020 Order shall be repaired by February 15, 2021.

18. Item numbers 6, 7, 8, 9, 10, 12, 13, 16, 17, 19, 22, 24 and 25 in the December 17, 2020 Order must be repaired by March 1, 2021.

Dated at Burlington, Vermont this 8th day of February, 2021.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Olivia Pena
Olivia Pena

/s/ Charlie Gliserman
Charlie Gliserman