



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 1/12/2022

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara

Josh O'Hara

Board Chair

cc: Cherylyn Ramos (via email & US mail)
Robert Meijers (via email & US mail)
William Ward (via email)
Patti Wehman (via email)

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

In re: Request for Hearing of CHERLYN)
RAMOS Regarding Rental Property at) Appeal of Minimum Housing Order
239 South Union Street, #3)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on December 6, 2021. Board Chair Josh O’Hara presided. Board Members Betsy McGavisk, Charlie Gliserman, Olivia Taylor and Evan Litwin were also present. Petitioner Cherylyn Ramos was present and testified. Also present were William Ward, Director of Permitting and Inspections; Patti Wehman, Division Manager for Housing and Code Enforcement; and Robert Meijers.

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. Robert Meijers is the owner of a rental unit, 239 South Union Street, #3, in the City of Burlington which is the subject of these proceedings.
2. On October 1, 2021, William Ward inspected the unit after receiving a complaint from petitioner about a broken toilet, a stove malfunction and a refrigerator leak in the unit¹. Mr. Ward confirmed that there was water underneath the refrigerator. He believed that the gasket on the refrigerator door was broken, causing the refrigerator condenser to run constantly which in turn created a leak under the refrigerator. William Ward contacted the property owner about the program. Robert Meijers told Mr. Ward he would have his property manager check the problem.

¹ The broken toilet and stove malfunction were not issues before the Board.

William Ward made arrangements to meet the property manager at the unit on October 12 for a joint inspection.

3. On October 12, 2021, William Ward and Nat Merrill (the property owner's son-in-law) met at the unit and inspected the refrigerator. It was Mr. Merrill's opinion that it would be easiest to just replace the refrigerator rather than try to repair it.

4. On October 18, 2021, William Ward issued an order requiring the refrigerator to either be repaired or replaced by November 12, 2021. The property owner purchased a reconditioned GE refrigerator from Resource to replace the one in petitioner's unit; the cost of the refrigerator was \$297.00. After a couple of failed attempts to deliver the refrigerator, it was finally delivered on November 16, 2021. Housing Manager Patti Wehman was at the unit when the refrigerator was delivered; she made sure it was set up and working properly. Although Ms. Wehman took photos of the inside of the refrigerator, and it did not look or smell dirty, she did not examine it closely. Ms. Wehman informed William Ward that the complaint could be closed as a working refrigerator was in the unit.

5. On November 18, 2021, petitioner emailed the Department of Permitting and Inspections to appeal Patti Wehman's determination that the reconditioned refrigerator met the Minimum Housing standards. Petitioner requested that the refrigerator be removed and a brand new one be provided.

6. Petitioner testified that the reconditioned refrigerator was unacceptable: it was dirty (dead flies and food present in the crevices), there were missing shelves and there was water pooling in it. Petitioner provided photos of the refrigerator to support her claim. The photos were taken very close up so that it is difficult to put them in context. The property owner maintained that the refrigerator was clean inside and out when it was delivered. When Patti

Wehman was at the unit for the delivery of the refrigerator she made sure it was level and checked that it was cooling. Petitioner acknowledged that the refrigerator was keeping her food at the correct temperature. Ms. Wehman took a few photos once the refrigerator was in place. Patti Wehman's photos included a scratch on the refrigerator, the interior of the refrigerator and the gasket on the door. Patti Wehman did not examine the inside of the refrigerator closely, and she was unable to identify what several of petitioner's photos depicted.

Conclusions of Law

7. 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.

8. BCO Section 18-104 requires that every supplied appliance, plumbing fixture, heating device or system be installed so that it will function safely and effectively and shall be kept in sound working condition. In construing an ordinance's words, we turn to their plain and ordinary meaning. In re Confluence Behavioral Health, LLC, 2017 VT 112, ¶20, 206 Vt. 302, 180 A.3d 867. The dictionary definitions of 'sound' and 'working order' mean that supplied appliances must be working properly and be free from defect. *Merriam-Webster*, <https://www.merriam-webster.com/dictionary>.

9. Petitioner testified that there was some pooling of water in the refurbished refrigerator and questioned the cleanliness of it. Patti Wehman did not inspect the refrigerator for cleanliness or spend much time making sure it was in sound working order. Because it was apparent from the testimony at the hearing that Ms. Wehman spent only a few minutes inspecting the refrigerator, the Board finds that the inspection was inadequate to determine whether the

refrigerator was free from defects that would affect its working condition. The Board further finds the brevity of the inspection regrettable in that the overall cleanliness of a refrigerator could arguably affect its working condition. The Board is mindful that the passage of time between the delivery of the refrigerator and the hearing, the petitioner's use of it during that time, and that the ordinances place the burden to maintain the care and cleanliness may make it impossible to determine whether Mr. Meijers delivered a refrigerator that was unclean.

10. In accordance with BCO Section 18-27, the Department of Permitting and Inspection shall reinspect the refurbished refrigerator at the rental unit within 15 days of the date of this Order. The Department shall make a determination with respect to the working condition of the refrigerator (ie, that it meets the temperature requirements for a refrigerator and there is no water pooling in or around it). The Department shall also inspect the cleanliness of the refrigerator to confirm or refute the petitioner's claims, to the extent that confirming or refuting those claims is possible given the passage of time.

Order

Accordingly, it is hereby ORDERED:

11. The Department of Permitting and Inspections shall reinspect the refurbished refrigerator in the rental unit within 15 days of the date of this Order and make a determination as to whether or not the refrigerator is in good working condition and to address its overall cleanliness. Further, the Department shall issue a report to petitioner and the property owner with their findings, including a remedy in the event the refrigerator does not meet the minimum housing standards.

DATED at Burlington, Vermont this 12th day of January, 2022.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara

/s/ Betsy McGavisk
Betsy McGavisk

/s/ Charlie Gliserman
Charlie Gliserman

/s/ Evan Litwin
Evan Litwin

/s/ Olivia Taylor
Olivia Taylor