



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**

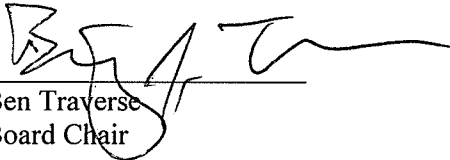
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 5/17/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse  
Board Chair

cc: Chris Khamnei  
Kim Ianelli  
William Ward  
Patricia Wehman

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

**In re: Request for Hearing of CHRIS )  
KHAMNEI Regarding the Rental ) CITY OF BURLINGTON  
Property at 199 South Union 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 April 18, 2016.<sup>1</sup> Board Chair Ben Traverse presided. Board Members Jason L’Ecuyer and Patrick Kearney were also present. Petitioner Chris Khamnei was present and testified. Kim Ianelli, Code Enforcement Officer, and William Ward, Director of the Code Enforcement Office, 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 Chris Khamnei is the owner of a rental property, 199 South Union Street, in the City of Burlington which is the subject of these proceedings.
2. On December 14, 2015, Code Enforcement Officer Kim Ianelli conducted a routine inspection of the property. In her order dated December 16, 2015, Ms. Ianelli noted several minimum housing code violations: no heating inspection tags on the building’s heating systems, deteriorated painted surfaces, lack of a graspable handrail, damaged walls, a loose toilet, a cracked window and a slow sink drain.
3. On January 15, 2016, petitioner appealed the order.
4. Section 18-86(c)(5) requires all fuel burning heating systems to be inspected and serviced biennially by a certified technician with proof of inspection stated on a tag issued by the Department of

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<sup>1</sup> This matter was originally scheduled to be heard on February 16, 2016 and proceeded before Board members Traverse and Kearney. Petitioner raised an objection regarding a majority of the Board not being present. The City’s ordinances expressly provide that where a majority of the Board is unavailable to hear a matter, a hearing officer may be appointed to proceed. See Section 18-54 of the Minimum Housing Code. The Board is unaware of any past decision being overruled on the ground that it was issued by an appointed hearing officer. That said, the acknowledges that the City’s ordinance can be read as conflicting with the State statute on housing boards of review, see 24 V.S.A. § 5005(c)(4), which appears to require that a majority of the Board sit to hear appeals from code enforcement officers. To avoid any procedural issues caused by this conflict, the Board rescheduled this hearing to April 18, 2016.

Public Works (hereinafter "DPW"). The tags currently issued by DPW include a line at the top of the tag to record the CO reading and date of inspection (a requirement of the 2012 State Fire and Building Safety Code). At the time of the inspection, tags were not present on the building's heating systems.

5. Petitioner, who is a certified technician, indicated at hearing that the tags are currently on the heating systems. The Board reviewed photographic evidence supporting this contention. However, according to the Code Enforcement Office, the tags remain deficient. Rather than list the CO reading and date of inspection on the front of the tags, Petitioner affixed to the back of the tags a printout of the reading, akin to a sales receipt. The Code Enforcement Office also noted that the printout lists an incorrect date of inspection. Petitioner testified that he has since transferred the proper inspection date and associated CO reading to the front of each tag.

6. 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 are several exterior areas with flaking and chipped paint. Petitioner is aware that he has until May 31, 2016 to repair those areas.

7. Section 18-74 of the Minimum Housing Code requires every inside and outside stair, porch, railing and any appurtenance to be safe to use and capable of supporting the load that normal use may cause to be put thereon and to be kept in sound condition and good repair. The exterior stairway to unit 11 does not have a graspable handrail. Petitioner claims that he does not know how to fix the handrail because he lacks the specifications for a handrail. However, the order includes specifications for a handrail. Further guidance is provided by consulting the Vermont Fire and Building Safety Code. At hearing, Petitioner also speculated that if he is required to install a graspable handrail, he will also be required to bring the entire stairway into conformance with current building standards.

8. Section 18-72(b) of the Minimum Housing Code requires interior walls and ceilings to be maintained in sound condition and good repair; cracked or loose plaster, peeling paint, decayed wood, and

other deteriorated or damaged surfaces must be eliminated. At the inspection, there was a hole in the wall near the entrance to unit 10 and a deteriorated surface in unit 4 below the heater.

9. Section 18-104 of the Minimum Housing Code requires every plumbing fixture to be kept in sound working condition. At the inspection, the toilet in the bathroom of unit 12 was loose.

10. Section 18-73 of the Minimum Housing Code requires windows to be kept in sound condition and good repair; exterior windows must be constructed and maintained to prevent wind and water from entering the dwelling and must be weathertight. At the inspection, the exterior windowpane of a kitchen window in unit 3 was cracked.

11. 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 to be kept free from obstructions, leaks and defects. At the inspection, the bathroom sink in unit 9 was not draining properly.

#### **CONCLUSIONS OF LAW**

12. Section 18-42(d) of the Minimum Housing Code 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.

13. Based on the evidence, the Board affirms the December 16, 2015 order.

14. With particular respect to the heating tags, the Board notes that if, upon reinspection, the heating tags are present in a form that correlates with Petitioner's testimony, they should be deemed to be in compliance with the Minimum Housing Code. To the extent deficiencies were present on Petitioner's initial printouts, the Board's understanding is that Petitioner's subsequent corrections would have been a proper exercise of his authority as a certified technician. The Board acknowledges, however, that accurate CO readings are absolutely essential towards maintaining a safe living environment. Accordingly, to the extent the Code Enforcement Office has any reason to question the accurateness of Petitioner's corrected readings, it should act within the full scope of its authority to correct any errors.

15. As regarding the requirement that Petitioner install a graspable handrail, the Board notes that Petitioner is effectively requesting a variance. Petitioner is merely speculating, though, when he expresses concern that he may also be required to modify the remainder of the staircase. The Board may not base a variance on speculation; rather, the Petitioner must demonstrate that “[b]y 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). Based on the evidence, the Board is unable to determine that Petitioner would, in fact, be required to modify the entire staircase; let alone that such a modification would warrant a variance.

**ORDER**

Accordingly, it is hereby ORDERED:

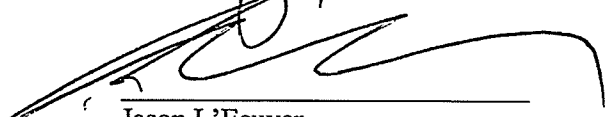
14. The Minimum Housing Order dated December 16, 2015 regarding 199 South Union Street is **AFFIRMED**. With the exception of the exterior painted surfaces which petitioner has until May 31 to repair, petitioner has 30 days from the date of this Order to make all other repairs.

DATED at Burlington, Vermont this 17<sup>th</sup> day of May, 2016.

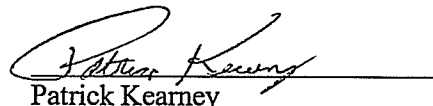
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Ben Traverse



Jason L'Ecuyer



Patrick Kearney