



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

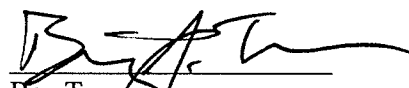
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 8/2/16

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traversé  
Board Chair

cc: Chris Khamnei  
Patricia Wehman  
Tim Ahonen



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.

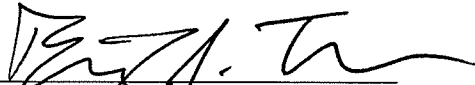
**ORDER**

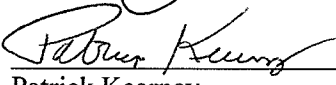
Accordingly, it is hereby ORDERED:


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

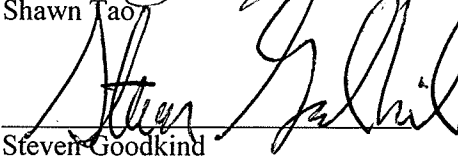
DATED at Burlington, Vermont this 2<sup>nd</sup> day of August, 2016.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
\_\_\_\_\_  
Ben Traverse

  
\_\_\_\_\_  
Patrick Kearney

  
\_\_\_\_\_  
Shawn Tao

  
\_\_\_\_\_  
Steven Goodkind