



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

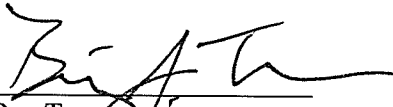
Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

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 10/25/17

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

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

cc: William Newton for Seven Fourteen Riverside Ave, LLC  
Ita Meno  
William Ward

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

**In re: Request for Hearing of Seven Fourteen )  
Riverside Ave. LLC Regarding the ) CITY OF BURLINGTON  
Rental Property at 714-716 Riverside ) HOUSING BOARD OF REVIEW  
Avenue )**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The above-named hearing came before the Housing Board of Review on October 2, 2017. Board Chair Ben Traverse presided. Board Members Patrick Kearney and Josh O'Hara were also present. Petitioner Seven Fourteen Riverside Ave. LLC was represented at the hearing by William Newton, Appletree Bay Property Management, who testified. Minimum Housing Inspector Ita Meno and William Ward, Director Code Enforcement Office, were also present.

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. Respondent Seven Fourteen Riverside Ave. LLC is the owner of property, 714-716 Riverside Avenue, in the City of Burlington which is the subject of these proceedings; there are 6 rental units at the property. Appletree Bay Property Management ("Appletree Bay") manages the property; William Newton is the property rental manager for Appletree Bay.

2. On May 18, 2017, Minimum Housing Inspector Ita Meno conducted an inspection of the property and issued an order. In that Order, Ms. Meno noted 21 minimum housing violations at the property.

3. On August 4, 2017, Ita Meno conducted a re-inspection of the property and noted 9 minimum housing code violations in 3 units at the property, six of which Ms. Meno alleged had been cited in the May 18 order. As deficiencies were not corrected between the original inspection and re-inspection, the Code Enforcement Office assessed re-inspection fees of \$180.00 - \$60.00 per unit.

4. The Minimum Housing Code provides that fees be paid by the owner of each property for a re-inspection that is required due to the existence of violations of the Code; for the first re-inspection, \$60.00 per unit is assessed. Minimum Housing Code Sec. 18-30(b).

5. William Newton disputed the fines as being unjust, even though Respondent (unbeknownst to him) had paid the re-inspection fees. The basis of Mr. Newton's dispute is that there were additional items cited in the re-inspection and it was unfair to levy fines on new items. However, Mr. Newton misunderstands how re-inspection fees are assessed. Code Enforcement only assesses fees on items that were not corrected from the original order. In this instance, Ita Meno alleged that 6 deficiencies appearing in the original order were not corrected at the re-inspection. Therefore, the Code Enforcement Office assessed \$180.00 in re-inspection fees.

6. The May 18 and August 4 orders also cited non-compliance with the city's lead-based paint responsibility. Section 18-112(b) of the Minimum Housing Code states:

All paint shall be presumed to be lead-based paint (LBP) when present on all dwellings constructed prior to January 1, 1978 unless the paint was found to be not lead-based by a state-certified lead testing inspector who has issued a report to the owner of their findings. Property owners wishing to be exempt from all LBP compliance activities under this ordinance must submit a copy of the certified inspectors' written report showing the dwelling to be free of LBP to the code enforcement office.

According to city records, the building was built in 1899. Thus, in her orders, Ms. Meno requested that respondent forward to the Code Enforcement Office a copy of the most recently completed EMP (essential maintenance practices) certification form filed with the State Lead Program as required by law. William Newton argued that the ordinance did not apply to the property because it was rebuilt in 1998.

#### **CONCLUSIONS OF LAW**

7. 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).

8. The Minimum Housing Code allows for the assessment of re-inspection fees when deficiencies found in an Order are not corrected when the re-inspection occurs. Respondent was assessed \$180.00 in re-inspection fees for deficiencies cited in the May 18, 2017 which were not corrected at the time of the re-inspection on August 4, 2017. The Board concludes the assessment of fees was proper and correct.

9. Section 18-112 of the Minimum Housing Code requires that dwellings constructed prior to January 1, 1978, presumed to contain lead-based paint (LBP), to comply with essential maintenance practices. If an owner of property wants to be exempt from the LBP compliance activities, they must submit certification that the property is free of LBP. Respondent has not submitted certification that either the property is exempt from the requirements or that it is in compliance with them. Therefore, the Board affirms the Minimum Housing Order with respect to the LBP certification requirement.


**ORDER**


Accordingly, it is hereby ORDERED:

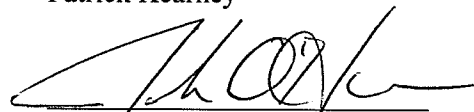
10. The Minimum Housing Order dated August 4, 2017 and the assessment of \$180 for re-inspections fees are affirmed.

Dated at Burlington, Vermont this 25<sup>th</sup> of October, 2017.

CITY OF BURLINGTON  
HOUSING BOARD OF REVIEW

  
Ben Traverse

  
Patrick Kearney

  
Josh O'Hara