

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 7/7/15

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW


Kirstin Daigle
Board Chair

cc: Laura Marcou
William Ward

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

In re: Request for Hearing of TYA LLC)
Regarding the Rental Unit at 43 South) CITY OF BURLINGTON
Williams Street, Apt. 9) HOUSING BOARD OF REVIEW

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-named hearing came before the Housing Board of Review on June 15, 2015. For purposes of expedition Board Members Kirstin Daigle and Ben Traverse were appointed hearing officers to hear and decide the above-referenced matter. Petitioner TYA LLC was represented at the hearing by Laura Marcou, the property manager. William Ward, Director of Burlington’s Code Enforcement Office, was 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 TYA LLC is the owner of rental property, 43 South Williams Street, in the City of Burlington which is the subject of these proceedings.
2. On February 18, 2015, Minimum Housing Inspector Tim Ahonen conducted an inspection of the premises. In his Order of February 18, Mr. Ahonen noted that one of the bedrooms in apartment 9 at 43 South Williams Street did not meet the minimum standard for light and ventilation.
3. Section 18-84(a) of the Minimum Housing Code requires each habitable room to have one window opening to the outdoors that can be opened; in addition, the minimum ventilation of the opened window area must be 4 percent of the floor area. Section 18-84(b) requires sleeping rooms to have windows measuring no less than 8 percent of the floor area.
4. On May 18, 2015, petitioner, through Laura Marcou, requested a variance from the code standard related to light and ventilation in the bedroom.

5. Although the bedroom does not have a window, it has a full glass door with screening that provides light and ventilation to the bedroom. William Ward confirmed that the door meets both the 4 percent and 8 percent requirement. Mr. Ward described the violation as being a technical one: while the door satisfies the requirement for light and ventilation, it is not a “window.” Mr. Ward also agreed that a variance should be granted such that the door satisfies the minimum requirements for light and ventilation.

CONCLUSIONS OF LAW

6. To grant petitioner 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. 18-42(c). Petitioner has met this standard.

8. Once this standard is met, the Board’s discretion to grant a variance is further circumscribed by another provision of Section 18-42(c), which provides that:

[T]he 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.

See also, 24 V.S.A. Sec. 5005(c)(2). There is no question that the minimum requirements for light and ventilation are being more than met. The fact that these requirements are being met by a glass door, rather than a “window,” is not in any way detrimental to the health and general welfare of the tenants residing there.

ORDER

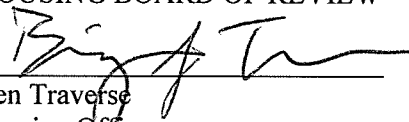
Accordingly, it is hereby ORDERED:

9. The request of petitioner TYA LLC for a variance from Section 18-84(a) related to light and ventilation is GRANTED, subject to the following condition:


a) To ensure that any subsequent purchaser of the property has notice of the conditions placed by this variance, petitioner shall cause a copy of these findings of fact, conclusions of law, and order to be recorded and indexed in the city land records.

DATED at Burlington, Vermont this 7th day of July, 2015.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW



Ben Traverse
Hearing Officer



Kirstin Daigle
Hearing Officer