

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. Wncv

STATE OF VERMONT,  
Plaintiff,

v.

GAETAN MARCHESSAULT and  
MARY JANE MARCHESSAULT,  
Defendants.

**COMPLAINT**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, pursuant to the Vermont lead law, 18 V.S.A., Chapter 38, the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, and 18 V.S.A. §130; and hereby makes the following Complaint against Gaetan Marchessault and Mary Jane Marchessault who own a rental property at 64 East Allen Street in Winooski, Vermont, and have: (1) filed a false Affidavit of Performance of Essential Maintenance Practices with the State of Vermont; and (2) engaged in deceptive acts and practices in commerce in violation of 9 V.S.A. § 2453(a).

**ALLEGATIONS**

*The Parties*

1. Gaetan Marchessault and Mary Jane Marchessault (“Defendants”) are the former owners of a rental property located at 76-78 Archibald Street in Burlington, Vermont (“the property”). The property has three rental units.
2. The property was built in 1910 and, therefore, is pre-1978 “target housing” within the meaning of Vermont’s lead law, 18 V.S.A. § 1751(19), and is subject to the requirements of 18 V.S.A. Chapter 38.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

3. The Attorney General has the right to appear in any civil action in which the State is interested when, in his judgment, the interests of the State so require.

3 V.S.A. § 157.

4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding the habitability of housing.

***Statutory Scheme***

5. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.
6. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all rental target housing. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).
7. EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated lead-based paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to the owner by a tenant, and posting lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4), and (7).
8. The Vermont lead law also requires that the owners of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and the owners’ insurance carrier. 18 V.S.A. § 1759(b).

9. Owners of rental target housing are required by the Vermont lead law to “take reasonable care to prevent exposure to, and the creation of, lead hazards.” 18 V.S.A. § 1761(a).
10. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, including renting of housing that is noncompliant with the lead law.
11. Violations of the Vermont lead law are subject to a civil penalty of up to \$10,000 per violation, 18 V.S.A. § 130, and in the case of a continuing violation, each day’s continuance may be deemed a separate violation. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

***Facts Relating to Defendants***

12. Defendants Gaetan Marchessault and Mary Jane Marchessault are the former owners of the property, which they have in the past rented and offered for rent.
13. On April 1, 2011, Defendants submitted a completed EMP compliance statement for the property to the Office of the Vermont Attorney General. Attachment A (EMP compliance statement, 76-78 Archibald Street). The EMP compliance statement purports to be signed by Defendant Mary Jane Marchessault. *Id.*
14. The EMP compliance statement represents that as of March 29, 2011, there was no deteriorated paint in excess of 1 square foot on any exterior surface of the property. *Id.*
15. On April 28, 2011 and May 6, 2011, Vermont Department of Health Lead Program Technician Edmund Daudelin performed visual inspections of the exterior of the

property as a part of the Department's code enforcement in Burlington. Daudelin oversees the Department of Health's EMP filing database and performs inspections for the Department.

16. Daudelin observed peeling and deteriorated paint on the exterior and interior surfaces of the property. Specifically, he observed and photographed peeling paint on all four exterior sides of the property and on the stairs leading to the upstairs apartments. He also observed and photographed peeling paint in the interior of the second floor apartment on the living room and bathroom window frames and the absence of window wells. *See Attachment B (photos of 76-78 Archibald Street taken by Daudelin on April 28, 2011 and May 4, 2011).*
17. Defendants no longer own the property.

**FIRST CAUSE OF ACTION – Consumer Fraud Act: false affidavit**

18. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.
19. By submitting a false EMP compliance statement to the State of Vermont in March 2011 and inaccurately representing that the property was in compliance with the lead law, Defendants engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act. 9 V.S.A. § 2453(a).
20. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).
21. Each day that a violation continues is a separate violation.

**SECOND CAUSE OF ACTION – Consumer Fraud Act: rental of substandard housing**

22. The allegations set forth in paragraphs 1-21 are incorporated by reference herein.
23. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.
24. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, 18 V.S.A. § 1759, Defendants engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act. 9 V.S.A. § 2453(a).
25. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).
26. Each day that a violation continues is a separate violation.

**THIRD CAUSE OF ACTION – Failure to perform essential maintenance practices**

27. The allegations set forth in paragraphs 1 to 26 are incorporated by reference herein.
28. The lead law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all rental target housing and that affidavits attesting to EMP performance be filed with the Vermont Department of Health and the property owner's liability insurance carrier on an annual basis. 18 V.S.A. § 1759.
29. Defendants violated Vermont's lead law, 18 V.S.A. Chapter 38, by failing to properly perform EMPs at the property.
30. A violation of the EMP requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6).
31. Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

**RELIEF SOUGHT**

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully asks the Court to award the following relief:

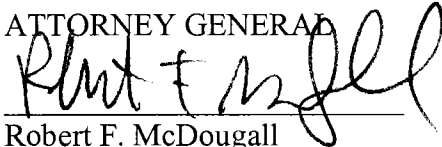
1. An Order finding that Defendants violated 9 V.S.A. § 2453(a) by filing a false Essential Maintenance Practices compliance statement for the property with the State of Vermont in April 2011.
2. An Order finding that Defendants violated 9 V.S.A. § 2453(a) by renting or offering for rent property that is not in compliance with the Vermont lead law and that the violation is continuing.
3. An Order finding that Defendants violated 18 V.S.A. § 1759.
4. Civil penalties of not more than \$10,000.00 for each violation of the Consumer Fraud Act.
5. Civil penalties of not more than \$10,000.00 for each violation of the lead law.
6. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
7. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 14<sup>th</sup> day of December, 2011.

Respectfully submitted,

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By:



Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, Vermont 05609  
802.828.3186

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### Essential Maintenance Practices Compliance Statement

(in accordance with 18 VSA § 1759)



An EMP Compliance Statement must be filed every 365 days for each residential rental property. A separate EMP Compliance Statement is required for each building along with its outbuilding(s). Please print.

Physical Address of Property: 76-78<sup>+78A</sup> Archibald St Original Date of Construction: BY: VM  
Burlington, VT Number of Units in Building: 3

I hereby certify that: 1) the following essential maintenance practices were completed on the dates given by the EMP certified person or entity specified for the property listed above; 2) all work was performed using lead safe work practices; and 3) that all information provided on this form is true and accurate. I understand that providing false, incomplete or inaccurate information on this form is unlawful and is punishable by civil and criminal penalties pursuant to Vermont law.

Mary Jane MARCHESSAULT Mary Jane Marchessault 3-29-11  
 Legibly print property owner's or manager's name Property Owner's or Manager's Signature Date

1460 North Avenue Burlington, VT 05408 802-343-6531  
 Property Owner's or Manager's Address Phone Number

Name of All Other Owner(s) and Property /Management Co., if any	Address	Phone Number

**Side 1: For the Property**

*Matthew Cross License 1140*

1. Visually inspected all exterior surfaces of the building and outbuilding(s) to identify deteriorated paint.	EMP Certificate # <u>11452</u>	Date <u>3/29/11</u>
2. Used safe work practices to stabilize deteriorated paint exceeding 1 sq. ft. on exterior surfaces within 30 days of visual inspection or report by tenant. <input type="checkbox"/> None	EMP Certificate # <u>11452</u>	Date <u>3/29/11</u>
<input type="checkbox"/> Access to the area by children was blocked if deteriorated paint was identified after November 1 and will be fixed by May 31.		
3. For any outdoor area, removed all visible paint chips from the ground on the property. <input checked="" type="checkbox"/> None	EMP Certificate # <u>11452</u>	Date <u>3/29/11</u>
4. Used safe work practices to stabilize deteriorated paint exceeding 1 sq. ft. on interior surfaces in common areas within 30 days of inspection or report by tenant. <input checked="" type="checkbox"/> None	EMP Certificate # <u>11452</u>	Date <u>3/29/11</u>
5. Performed annual specialized cleaning in common areas within the building.	EMP Certificate # <u>11452</u>	Date <u>3/29/11</u>
6. Posted a notice to occupants encouraging them to report deteriorated paint to the owner or owner's agent.	Location <u>Back Porch</u>	Date <u>3/29/11</u>

Side 2: For Each Unit at 76-18<sup>th</sup> Archibald St.  
 Address of Rental Property

7. Visually inspected window wells to verify that inserts were installed in wooden windows or were not needed because windows are aluminum or vinyl.

	Unit # <u>1</u>	Unit # <u>2</u>	Unit # <u>3</u>	Unit # _____	Unit # _____	Unit # _____
EMP Certificate #	<u>11452</u>	<u>11452</u>	<u>11452</u>			
Date insert verified or installed	<u>3/29/11</u>	<u>3/29/11</u>	<u>3/29/11</u>			
Vinyl/aluminum window	<u>X</u>		<u>X</u>			
Other: please specify						

8. Visually inspected all interior surfaces of the units to identify deteriorated paint. Used safe work practices to stabilize deteriorated paint exceeding 1 sq. ft. on interior surfaces within 30 days of visual inspection or report by tenant.

	Unit # <u>1</u>	Unit # <u>2</u>	Unit # <u>3</u>	Unit # _____	Unit # _____	Unit # _____
EMP Certificate #	<u>11452</u>	<u>11452</u>	<u>11452</u>			
Date inspected	<u>3/29/11</u>	<u>3/29/11</u>	<u>3/29/11</u>			
No deteriorated paint	<u>✓</u>	<u>✓</u>	<u>✓</u>			
Date deteriorated paint stabilized						

9. At change of tenant, visually inspected unit interior and building exterior to identify deteriorated paint and performed specialized cleaning in unit. Used safe work practices to stabilize deteriorated paint exceeding 1 sq. ft. within 30 days.

	Unit # <u>1</u>	Unit # <u>2</u>	Unit # <u>3</u>	Unit # _____	Unit # _____	Unit # _____
No Change of Tenant	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EMP Certificate #						
Date inspected						
No deteriorated paint						
Date deteriorated paint stabilized						
Date performed cleaning						

10. Prior to entering into a lease or rental agreement (written or oral), provided to approved tenants a copy of the pamphlet "Protect Your Family From Lead in Your Home" and a copy of the most recent EMP Compliance Statement.

Unit # _____	Date gave pamphlet _____	Date gave Compliance Statement _____	Date entered into lease or rental agreement _____
Unit # _____	Date gave pamphlet _____	Date gave Compliance Statement _____	Date entered into lease or rental agreement _____
Unit # _____	Date gave pamphlet _____	Date gave Compliance Statement _____	Date entered into lease or rental agreement _____

No new lease or rental agreements during this time period

11. Within 10 days of signing this Compliance Statement, I will ensure that the pamphlet "Protect Your Family From Lead in Your Home" and a copy of this EMP Compliance Statement will be given to tenants. A copy of this EMP Compliance Statement will also be given to my liability insurance company.

Property Owner's or Manager's Signature \_\_\_\_\_ Date \_\_\_\_\_

The date that this compliance statement is received by the Department of Health becomes your annual compliance date for the purposes of fulfilling 18 VSA § 1759. This means you will be required to complete and file your next compliance statement within 365 days of the date this compliance statement is received by the Department. Each year a compliance statement must be given to each tenant and must be filed with the owner's liability insurance carrier and with the VERMONT DEPARTMENT OF HEALTH, Childhood Lead Poisoning Prevention Program, PO Box 70, Burlington, VT 05402-0070.





4/28/2011  
Marchessault - B Side Porch



4/28/2011  
Marchessault - B Side Eaves and Porch

**ATTACHMENT B**



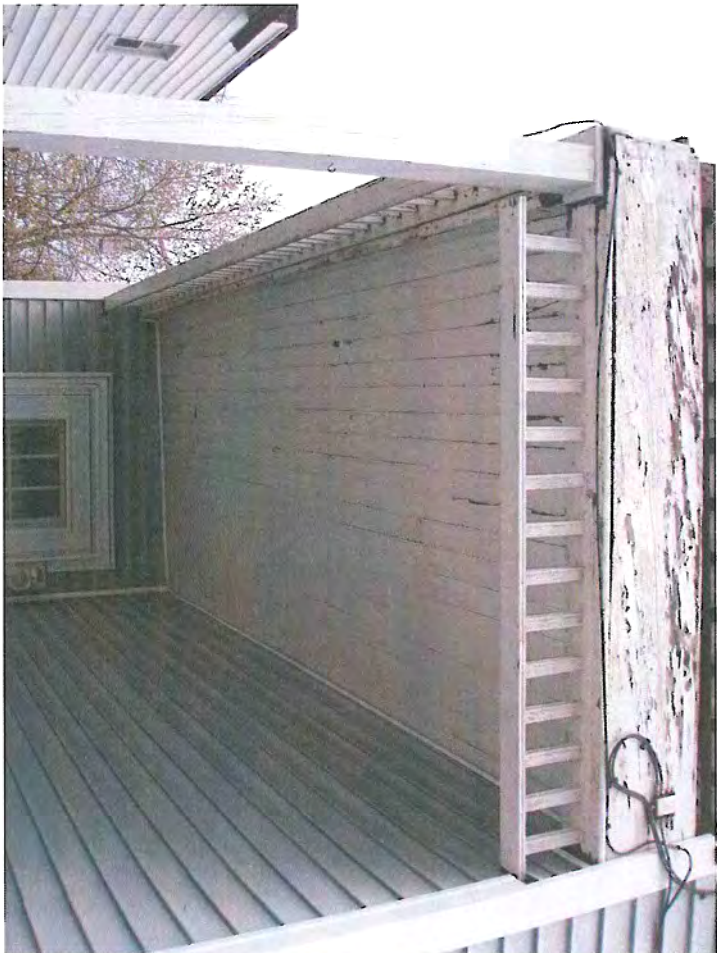
4/28/2011  
Marchessault - Front Entrance to 78 Archibald St.



4/28/2011  
Marchessault - Eaves



4/28/2011  
Marchessault - Side D



4/28/2011  
Marchessault - B Side Porch Roof



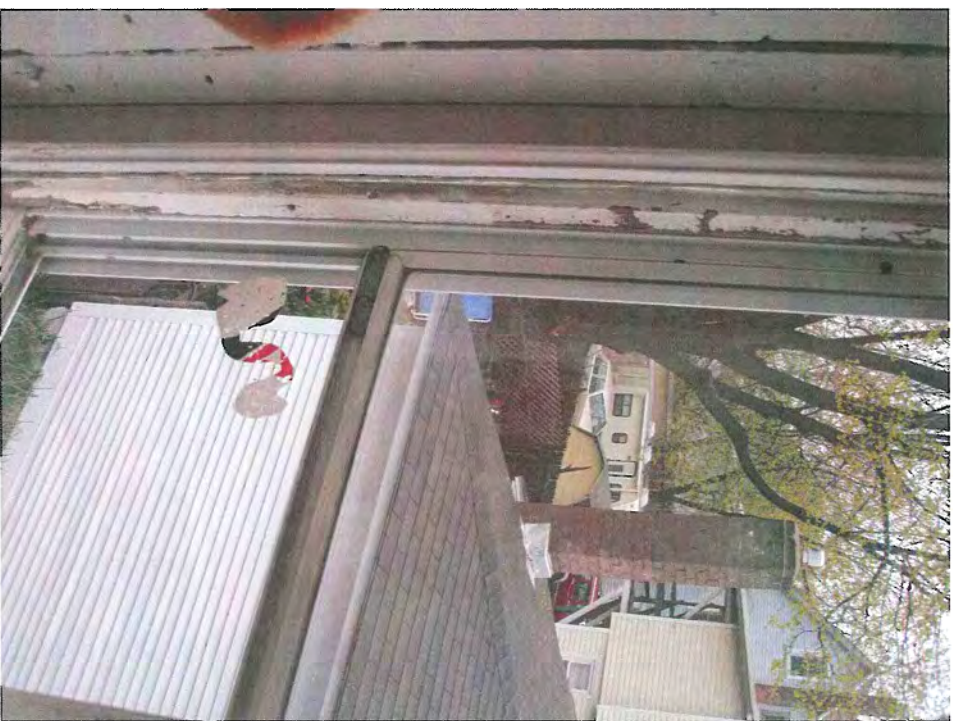
5/4/2011  
Marchessault - Side D Window



5/4/2011  
Marchessault - Side B Window



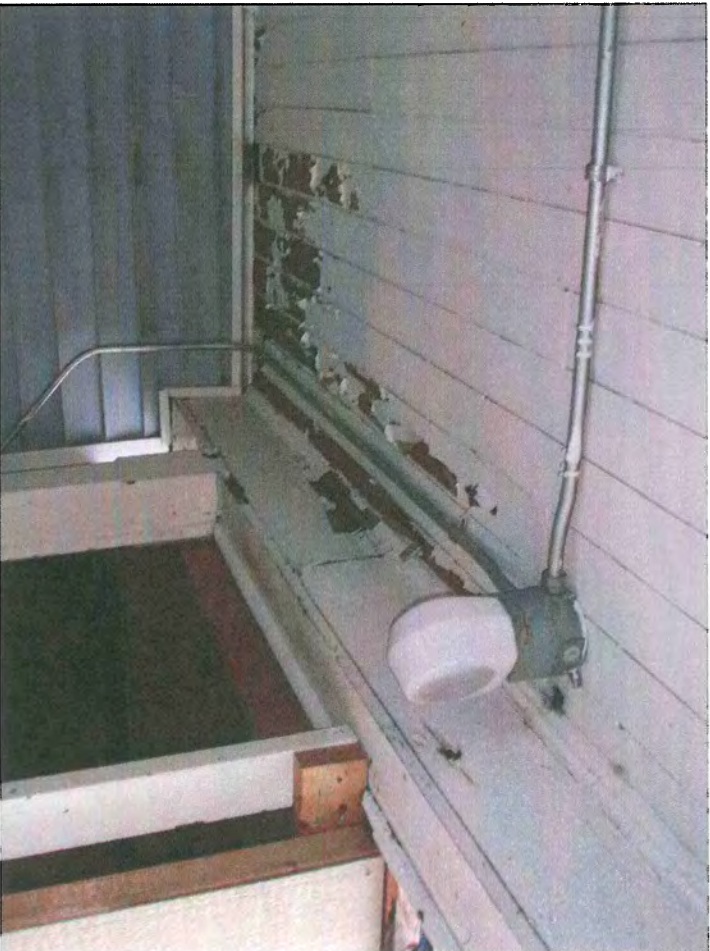
4/28/2011  
Marchessault - Side A Entrance to 78 Archibald St.



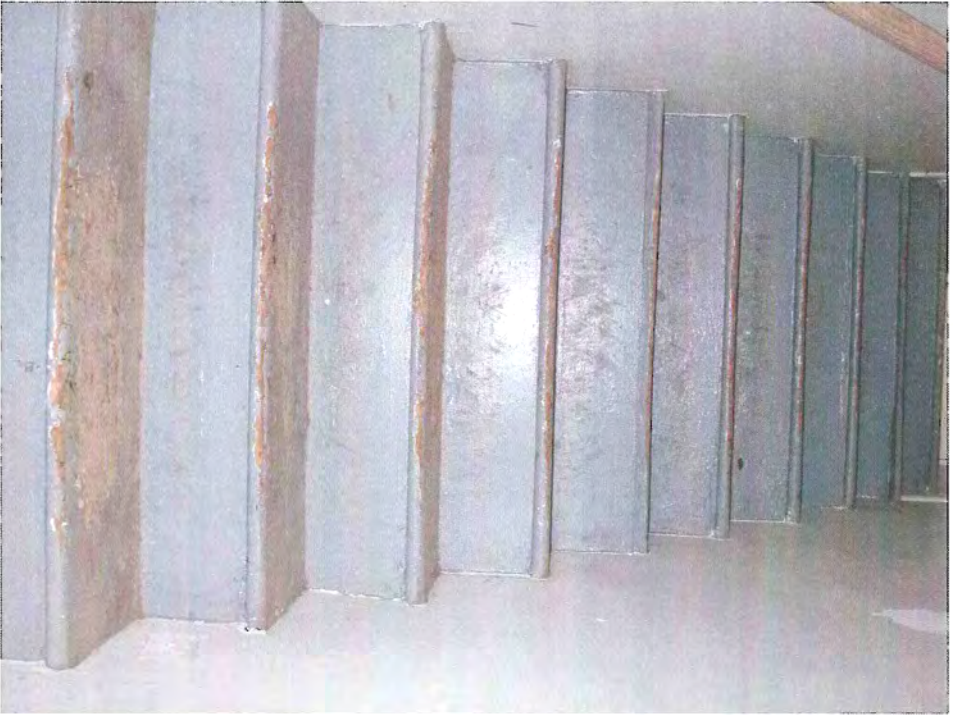
5/4/2011  
Marchessault - Side D Window



5/4/2011  
Marchessault - Side B Window



5/4/2011  
Marchessault - Side C Porch Ceiling



5/4/2011

Marchessault - Side D 2nd Floor Entrance