

**PUBLIC HEALTH APPEAL BOARD**

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*  
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE ORDER OF  
AN EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH  
SERVICES, ZONE 4, DATED FEBRUARY 28, 2019**

PANEL: Denis Lefebvre, Esq., Chair  
Wendy Lickacz, Vice-Chair  
Ike Zacharopoulos, Member  
David Rolfe, Member

BETWEEN:	)	
	)	
	)	
<b>MATTHEW PETER</b>	)	Matthew Peter,
(Appellant)	)	Self-represented
	)	
- and -	)	
	)	
<b>ALBERTA HEALTH SERVICES</b>	)	
(Respondent)	)	Linda A. Svob,
	)	Alberta Health Services,
	)	for the Respondent
	)	
	)	
	)	
Heard: April 26, 2019	)	Stuart Chambers,
	)	McLennan Ross LLP,
	)	Independent Counsel for the Board
	)	

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**DECISION AND REASONS FOR DECISION**

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This matter came before a panel of the Public Health Appeal Board (the "Panel") on April 26, 2019, in Edmonton, Alberta. A notice of appeal was received on April 3, 2019. The hearing was subsequently set for April 26, 2019.

## The Appeal

[1] This is an appeal (the “Appeal”) to vary an order of an Executive Officer (“EO”) dated February 28, 2019 (the “Order”).

## Board Decision

[2] The Order is confirmed for the reasons provided below.

## Background

[3] The subject-matter property is detached single dwelling in the City of Edmonton and is municipally described as 7805 114 Street North West (the “Premises”).

[4] The Appellant is the registered owner of the Premises.

[5] On December 19, 2018, Justice G.R. Fraser granted an order (the “QB Order”) allowing Alberta Health Services (“AHS”) access to two (2) properties owned by the Appellant. The Premises was one of those properties.

[6] Pursuant to the QB Order, EOs Allen and Moreno conducted an onsite inspection of the Premises on January 9, 2019. In fact, this was not the first inspection and numerous items previously cited by EOs were still present.

[7] On February 9, 2019 EO Allen and Moreno attended at the Premises for an inspection (the “Inspection”).

[8] Following the Inspection, EO Allen issued the Order.

[9] The Order required that the owner immediately undertake and diligently pursue the completion of the following work:

- (a) Install electrical outlet plate covers throughout the premises including in the upstairs hallway. Ensure they are in good repair.
- (b) Ensure the ventilation in the upstairs washroom work when the bathroom is in use.
- (c) Ensure the upstairs washroom sink forms a watertight joint with the wall.
- (d) Remove the towel from the heating duct and install a cover in the upstairs washroom.
- (e) Repair the damaged ceiling finishes in the upstairs so it is in good repair and easy to clean.
- (f) Remove the damaged kitchen counter and shelf and replace with material that is in good repair, smooth and non-absorbent to moisture.
- (g) Repair or replace kitchen drawers and doors so they are in good repair.

- (h) Install a ceiling in the washroom that is in good repair, smooth, and non-absorbent to moistures.
- (i) Repair the damaged wall finishing near the shower faucet and the damaged tiles near the toilet in the main floor washroom.
- (j) Identify and correct the source of water staining in the living room ceiling and replace the damaged material. Asbestos testing must be done prior to disturbing the material and the report must be submitted to environmental public health.
- (k) Repair or replace the flooring in the basement suite so it is in good repair and easy to clean.
- (l) Finish the ceiling in the basement suite so it is in good repair.
- (m) Repair the damaged flooring in the downstairs washroom so it is in good repair, easy to clean and non-absorbent to moisture. It appeared to be from the door scrapping the flooring when it was opened and closed.
- (n) Ensure the mechanical ventilation in the basement washroom is property vented to the exterior of the premises.
- (o) Repair/modify the side door so it is adequately weatherproofed.

(Hereinafter the “Work”)

[10] The Work was to be completed on or before March 31, 2019.<sup>1</sup>

### **Grounds of the Appeal**

[11] In his Notice of Appeal, the Appellant states that he takes no issue with anything in the Order except with paragraph 1(n), which deals with ventilation in the basement washroom.

[12] The pertinent alleged deficiency is found in the preamble of the Order and states as follows:

o. The mechanical ventilation in the basement washroom does not vent to the exterior of the premises.

[13] This led to the following indication of a statutory breach, namely of the *Minimum Housing and Health Standards* (the “Standards”):

b. Items (b., o., r., and s.,) are in contravention of section IV(7)(c) of the [Standards] which states that all rooms containing a flush toilet and/or bathtub or shower shall be provided with natural or mechanical ventilation.

[14] This in turn led to paragraph 1(n) of the Order, which states that that the Owner is to ensure the mechanical ventilation in the basement washroom is properly vented to the exterior of the premises.

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<sup>1</sup> The Order stated March 31, 2018, but it is obviously a typo.



[15] The Appellant submits that “[t]he minimum housing and health standards states that there must be natural or mechanical ventilation.” After a previous inspector’s visit, he states that he installed a vent to the inside of the house and was allegedly told by the inspector as well as other people that this meets the criteria for natural ventilation.

[16] Therefore, there is only one ground in this Appeal: that the EO incorrectly interpreted the Standards as it pertains to the ventilation of the basement washroom.

### **Timing of Appeal**

[17] Section 5(3) of the *Public Health Act* requires the Appellant to serve the notice of an appeal within 10 days after receiving notice of the decision being appealed.

[18] The Public Health Appeal Board Secretariat received a notice of the appeal dated April 2, 2019 (the “Notice of Appeal”) on April 3, 2019. While the Notice of Appeal appears to have been filed late, the Appellant indicates in the Notice of Appeal that he only received the Order on March 24, 2019. The Alberta *Interpretation Act* at section 22(7) tells us that when something is to be done within a time after a specified day, the time does not include that day. Accordingly, we do not include March 24, 2019 in the calculation. This means that the Appellant appears to have filed the Notice of Appeal on the 10<sup>th</sup> day, which is within the statutory prescribed time period.

[19] Since the Respondent raises no objection and has not provided any evidence to the contrary, the Panel accepts the Notice of Appeal as having been filed on time.

### **Jurisdiction**

[20] The Respondent raised no objections to the jurisdiction of the Panel to hear this matter.

[21] The Appellant, however, raised objections to the jurisdiction of the Panel. Specifically, the Appellant objects:

- (a) to the selection/appointment process of the members of the Public Health Appeal Board (the “Board”); and
- (b) to his perceived lack impartiality of those members, given the selection/appointment process.

[22] The Appellant submits that it is his understanding that the Board members are involved in establishing the selection/appointment criteria for their own appointment. Further, he argues that the Lieutenant Governor appoints the members of the Board, which he disagrees with, as the Lieutenant Governor is not an elected official and a direct representative of a foreign government, and therefore has no business in Alberta whatsoever.

[23] The Panel cannot consider the Appellant’s submissions as they are outside of the Board’s jurisdiction. That is to say, neither the *Public Health Act* nor the *Public Inquiries Act* confers upon the Board the power to consider matters to go to the selection process of Board members.

## Documents/Exhibits

[24] Prior to the commencement of the hearing, the following documents were entered as exhibits by agreement of the parties:

- (a) **Exhibit 1** – the Order;
- (b) **Exhibit 2** – The Notice of Appeal;
- (c) **Exhibit 3** – Photos from the Appellant; and
- (d) **Exhibit 4** – Binder prepared by AHS, containing its document disclosure.

## Legal Issues

[25] The legal issues on this Appeal for consideration by the Panel are as follows:

- (a) Whether ventilation to the exterior of the house is required; and
- (b) Whether the ventilation installed by the Appellant constitutes proper ventilation in accordance with the Standards.

## Submissions of the Appellant

[26] The Appellant submits that he has owned the Premises for approximately 12 years, and during this time, he is not aware of any mold problems whatsoever in the basement bathroom. According to the Appellant, there has never been any problems with moisture at all, let alone mold.

[27] In support of his submissions, the Appellant has provided photographs at Exhibit 3. These photos were taken approximately one week prior to this hearing. Further, he submitted that the bathroom had not been painted in approximately two to three years. The Appellant argues that this is not a situation where someone tried to cover up a mold issue by covering it with a fresh coat of paint. The Appellant therefore submits that there is no mold issue as shown in the photos.

[28] The Appellant argues that the EOs are too overzealous in their inspections of the Premises. He feels harassed by the AHS, as he believes there are no health hazards at the Premises.

[29] The Appellant also submits that the Premises is not a rental property in the true sense; that is, he lives in the Premises but has “house guests” that come and visit from time to time and also has “roommates” who help him pay the bills either by paying in cash or by services rendered (i.e., cleaning the Premises). This is not a typical rent accommodation according to the Appellant.

[30] With respect to the ventilation in the basement bathroom, the Appellant submits that either natural or mechanical ventilation is required by the Standards. The Appellant argues that the definition of “natural” does not stipulate that it must be ventilation to the exterior of the Premises. That is to say; the Standards do not require natural ventilation to be exterior ventilation, otherwise the legislators would have added the word “exterior” to the definition. The Appellant submits that he is the victim of poorly drafted Standards.



[31] This is not something that is new, according to the Appellants. Over the past decade or so, there have been numerous inspections of the Premises by AHS. One of the EOs (identified by the name of Velthuzien) reportedly spoke to the Appellant specifically with respect to the basement bathroom ventilation. Based on that conversation, the Appellant installed ventilation, which passed a subsequent inspection by the EO. He further submits that as many as four or five EOs have inspected the Premises since having installed the ventilation and the said EOs all stated that the ventilation as installed was fine. It was not until EO Meaghen Allen's ("EO Allen") inspection that now the ventilation is not adequate. The Appellant contends that the ventilation he installed is in fact natural ventilation and perfectly adequate, as it vents naturally to the inside of the Premises. The definition of "natural" on the website "Dictionary.com" does not mean exterior.

[32] Ultimately, what the Appellant is seeking is to have paragraph 1(n) of the Order struck.

### **Submissions of the Respondent**

[33] The Respondent submits that the name of EO Velthuzien Selina ("EO Selina") does not appear anywhere in the files related to the Premises. According to EO Allen, the EO was not involved with the Premises based on her review of the file.

[34] The Respondent submits that the Premises is a public place per the *Public Health Act* (the "Act"). Accordingly, there is a statutory right of inspection pursuant to s. 59 of the Act.

[35] The EO Allen first inspected the property on January 9, 2019 with her colleague, EO Elio Moreno ("EO Moreno"). Upon entering the Premises, it was noted that there was no natural ventilation (a window opening to the outside of the Premises) or mechanical ventilation in the basement washroom. For ventilation, the EOs observed a hole in the wall that separated the washroom from the hallway. The EOs did not notice any mold except for a small amount of surface mold by the silicone around the tub, but nothing that soap and water could not easily remove. What concerned EO Allen, however, was that the lack of appropriate ventilation that could potentially expose occupants to harmful chemical (found in cleaning products, for example). Hence, without proper ventilation, indoor air quality is a concern.

[36] The Respondent submits that while the ventilation as installed by the Appellant may remove moisture and/or chemicals from the washroom, since it is not venting to the outside, that moisture and/or chemicals will simply migrate to another portion of the Premises.

[37] The Respondent submits that the Standards stipulate that that all rooms containing a flush toilet and/or bathtub or shower shall be provided with natural or mechanical ventilation. The Respondent further submits that while the Standards does not define "natural" or "mechanical" ventilation, the Courts have judicially considered section 7 of the Standards and, natural or mechanical ventilation means either a window or built-in fan, with direct connection to the outside. As such, the ventilation of the basement washroom of the Premises does not comply with the Standards.

### **Analysis and Reasons**

[38] The Appellant submits that the Premises is not a rental accommodation "in the true sense". He argues that those residing are "guests" that help him pay the bills. While this issue is not included in the Notice of Appeal, the Panel will address it nonetheless, as the determination of whether the Premises is a "public place" as defined in the Act.

[39] The Panel cannot accept the Appellant's argument that the Premises is a private dwelling. The fact that persons other than family members reside in the Premises in exchange for some form of compensation (whether paying bills or provided services, such as cleaning) makes it clear that the Premises is a rental accommodation and therefore a public place as defined at s. 1(ii)(viii) of the Act. As such, the EOs have the authority to enter upon the premises to conduct inspections per s. 59 of the Act.

*Whether ventilation to the exterior of the house is required*

[40] The Standards at section 7(c) state as follows:

(c) All rooms containing a flush toilet and/or bathtub or shower shall be provided with natural or mechanical ventilation.

[41] Unfortunately, the Standards do not define "natural" or "mechanical", nor do the Standards specify whether the ventilation must be to the exterior of the Premises.

[42] However, the Alberta Provincial Court has judicially considered section 7(c) of the Standards. In *R. v. Wannas*<sup>2</sup> the Honourable Judge D.J. Tilley accepted the Crown witness' interpretation of section 7(c) that "[n]atural or mechanical ventilation means either a window or a built-in fan, with direct connection to the outside." Further, the Court stated that "[t]his is the ordinary meaning of the terms. They are not terms of art."

[43] Section 7(c) as judicially considered by the Provincial Court conclusively settles any arguments as to what "natural" and "mechanical" mean.

*Whether the ventilation installed by the Appellant constitutes proper ventilation in accordance with the Standards*

[44] The Appellant does not deny the fact that ventilation for the basement washroom is required under the Standards. In fact, he acknowledges the regulations respecting the requirements for ventilation. However, he states that the vent as installed (that is, an opening in the wall that separates the washroom from the hallway and covered by a grill) satisfies the criteria for natural ventilation. Having said that, the Appellant also disagrees that ventilation is needed in the first place because there is no mold issue in the washroom and, as such, ventilation is not required in the circumstances.

[45] The presence of a mold problem is not the standard by which the requirement for ventilation is measured. That is, following the requirements of the Standards is not optional where an owner feels that ventilation is not necessary because of the absence of mold. The purpose behind the regulations is to minimize or reduce the risk of mold or other airborne pathogens (or chemicals) in order to "protect and promote the health and well-being of occupants of rental housing premises ..."<sup>3</sup>

[46] During cross-examination of the EO, the Appellant asked whether the EO took samples to confirm the presence of mold. The Appellant generally challenged the EO's conclusions and suggested that the EO would have to prove the presence of mold or other chemicals. However, an EO does not have to prove the presence of harmful substances in order to issue the Order. Pursuant to s.

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<sup>2</sup> 2004 ABPC 85 at para. 354.

<sup>3</sup> Minimum Housing and Health Standards, page 3, para. 1



62(1) of the Act, an EO may issue an order if he/she has reasonable and probable grounds to believe that a nuisance exists in or on the public place that was the subject of an inspection. Further, the term “nuisance” means “a condition that is or might become injurious or dangerous to the public health, or that might hinder in any manner the prevention or suppression of disease”<sup>4</sup>. In the present case, the EO found that the lack of ventilation may cause harm to the health of occupants, which falls squarely within the meaning of “nuisance”.

[47] The ventilation as installed is an opening in the wall of the basement washroom that leads to the hallway, covered with a grill. This ventilation is neither “natural” nor “mechanical” and does not vent to the outside of the Premises as required under the Standards.

### **Findings and Conclusion**

[48] After reviewing the evidence and submissions made by the Parties, the Panel makes the following findings:

- (a) With respect to legal issue 1, the Panel finds that the ventilation for the basement washroom must be ventilated to the outside of the house.
- (b) With respect to legal issue 2, the Panel finds that the ventilation as installed is not proper ventilation and is contrary to the Standards.

[49] Based on the aforementioned findings, the Board confirms the Order.

[50] The Order shall remain in force until such time as AHS rescinds the order in accordance with the *Public Health Act* or until AHS issues a Notice of Compliance.




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Denis Lefebvre, Chair  
On behalf of the Panel of the  
Public Health Appeal Board

**Date: September 6, 2019**

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<sup>4</sup> *Public Health Act* R.S.A 2000, c. P-37 at s. 1(ee)