

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 TIMOTHY
SHCHUREK OF THE ORDER OF AN EXECUTIVE OFFICER
ISSUED BY ALBERTA HEALTH SERVICES ZONE 3 - TWO
HILLS DATED JUNE 26, 2017

AND IN THE MATTER OF AN APPLICATION TO EXTEND
TIME TO FILE A NOTICE OF APPEAL

DECISION OF THE BOARD

Written Submissions

Rather than hold a hearing of this matter, the Board requested written submissions from the parties.

Submissions were provided by:

Mr. Timothy Shchurek, Owner/Appellant; and

Ms. Linda Svob, Legal Counsel for Alberta Health Services, Respondent.

The Board met on August 18, 2017 to consider the application.

Decision of the Board

[1] The Board has dismissed the Appellant's application to extend time to file the Notice of Appeal.

Background

[2] On June 26, 2017, the Appellant was verbally issued an order from Executive Officer Trevor Meiklejohn of Alberta Health Services (the "Order") following an inspection.

[3] The Order directed the following:

1. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
 - a. Provide one window in each bedroom that meets the requirements of Section 3(b) of the minimum Housing and Health Standards.

- b. Remove all moisture damaged building materials (i.e. wall panelling, ceiling tiles) in basement area. Thoroughly dry all affected areas. Take steps to ensure moisture infiltration and accumulation does not occur into premises interior.
- c. Re-locate existing main floor smoke alarm to hallway ceiling area in between main floor bedrooms.
- d. Install window screens (in good repair) on all operable windows intended for ventilation purposes.
- e. Repair disconnected oven door handle to allow for proper function.
- f. Install closure mechanism on rear (east) entry screen door to allow for proper closure.
- g. Fasten/secure loose handrail (front entrance railing) to exterior wall.
- h. A handrail is required on stairs with more than 3 risers, inside or outside a building. Install handrail on basement stairwell.
- i. Install downspout diversion drainage piping on south side of rear entry area to direct water drainage away from dwelling foundation.
- j. Re-attach baseboard in kitchen area. Ensure it is attached in a way that does not easily become detached.

2. The work referred to in paragraph 1 shall be completed by August 31, 2017.

[4] The written Order is dated June 26, 2017.

[5] The Appellant filed a Notice to Appeal on July 28, 2017. According to the Notice of Appeal, the Appellant is only appealing subparagraph 1(a) of the Order, which requires that one window in each bedroom in the basement meet the requirements of Section 3(b) of the Minimum Housing and Health Standards.

Issue

[6] Whether the Board considers it appropriate to extent the time for the Appellant to file the Notice of Appeal.

Facts

[7] The Executive Officer confirmed that he provided the Appellant with a verbal order on June 26, 2017.

[8] On July 7, 2017, the Appeal Secretariat received a phone call from the Appellant. The Appellant stated that he had just received the written Order by mail and wanted to appeal. He requested information and the forms for the appeal. Specifically, he requested hard copies of the appeal documents by mail.

- [9] That same day, on July 7, 2017, The Appeal Secretariat sent the appeal documents by Xpresspost to the Appellant's address for service in Kelowna B.C.
- [10] On July 28, 2017, the Appeal Secretariat received an email from Ivona Shchurek attaching the Order and the signed Notice of Appeal.

Submissions of the Appellant

- [11] The Appellant submits that he is a senior with poor writing and shaking hands and never had the opportunity to learn to type a letter on the computer and transfer it to print. He also stated that his next-door neighbour's daughter helped him with all of his correspondence but she was unavailable until the time he submitted the appeal.
- [12] The Appellant further submitted that the time frame from when he received a previous order (which did not raise the issue of the window sizes) to when he received the Order dated June 26, 2017 was over five (5) years. As such, he believed that the Board should allow him some leeway of one or two weeks.

Submissions of the Respondent

- [13] The Respondent submitted that filing a Notice of Appeal some 32 days from when the Appellant received verbal notice of the Order, and at least 21 days from when he received the Order in the mail, was excessive and the Appellant did not provide any compelling reason for the delay.
- [14] The Respondent further submitted that the Appellant, as a landlord, is responsible to ensure that he fully understands his rights and obligations pursuant to the *Public Health Act* (the "Act"), including the 10 day appeal period.
- [15] Finally, the Respondent stated that seriousness of the decisions being addressed, in this instance emergency egress at a rental accommodation, affects the public health and should be dealt with in a timely manner.

Discretion of the Board

- [16] The Board may extend time to file an Appeal pursuant to s.5(9) of the Act, which states as follows:
- 5(9) Notwithstanding subsections (3) and (4), the Board may, if it considers it appropriate to do so, extend the time within which an appeal may be taken under subsection (3) or within which the Board must act under subsection (4).
- [17] Whether the extension is "appropriate" is a very broad test. The Board has therefore decided to consider a list of criteria to guide its decision (the "Criteria") as follows:
- a. Whether the Appellant had a *bona fide* intention to appeal before the expiration date of the appeal period;

- b. Whether the Appellant, either expressly or impliedly, informed the respondent of his or her intention to appeal;
- c. Whether the respondent would be unduly prejudiced by an extension of time;
- d. Whether there was merit in the appeal in the sense that there was a reasonably arguable ground;
- e. Whether the Appellant had a valid explanation for the late filing of his or her appeal; and
- f. Whether it was in the interests of justice that the extension be granted.

[18] The Board is not bound by the Criteria in the exercise of its discretion pursuant to Act. Ultimately, the Board is required to determine if it considers it appropriate to extend the time within which an appeal may be accepted.

Reasons

[19] The submissions of the Respondent are unfortunately of very little assistance to the Board. The fact that the matter is serious does not negate the Appellant's right to procedural fairness and natural justice.

[20] It is evident from the facts that Appellant had a *bona fide* intention to appeal and that intention was communicated to the Secretariat prior to the expiration of the appeal period.

[21] While the issue of prejudice to the Respondent was not advanced by either party, the Board does not feel that this criterion needs to be addressed in the circumstances. Needless to say, the Board does not find any evidence of prejudice.

[22] The Board's main concern is whether the Appellant provided (a) valid reason(s) and (b) whether the Appellant's appeal has reasonable arguable grounds.

[23] The Appellant has provided very little by way of explanation and information as to why he could not adhere to the filing deadline. For example, no steps taken and corresponding dates were provided. The Board notes a three (3) week gap from the time the appeal documents were sent to him via Xpresspost and the date the signed Notice of Appeal was received by the Secretariat via email on July 28, 2017. There was nothing provided to the Board in the Appellant's submissions except to state that he had to wait for a neighbour's return for assistance.

[24] When considering whether the appeal has reasonable arguable grounds, the Board is not deciding the merits of the appeal, but only if there are reasonable grounds for the appeal.

[25] In his Notice of Appeal, the Appellant states the following:

“the only section of the work order that I am not in agreement with is “a”. The window's [sic] not meeting the required size.”

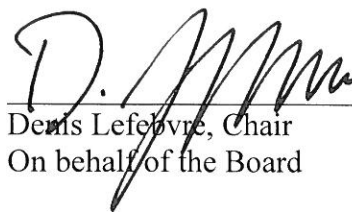
“The window size is what the house was built with and I would think that this should be “grandfathered” through, however if this is not sufficient, I will continue.”

“...on [the Executive Officer’s] SECOND inspection informs us the windows are not the right size. If he would have told us the first time it would have been no problem to cut the wall, install proper sized windows, and continue the work. I believe that Alberta Health officer Meiklejohn should be held accountable for his inconsistency. His professional oversight should not be response for my needless direct expense.”

- [26] The Appellant does not dispute the fact that the windows are not in compliance with the Act and the Regulations. He is asking that the provision of the Act and/or the Regulations be “grandfathered” as to relieve him of the Minimum Housing and Health Standards.
- [27] The Board does not have the power under its enabling legislation to “grandfather” any provision of the Act or the Regulations. As such, the remedy sought in this appeal is outside of the Board’s jurisdiction.
- [28] Further, it is unreasonable for a landlord to blame an Alberta Health officer for non-compliance with the Act or the Regulations. The Alberta Provincial Court’s decision in *R. v. China BBQ Specialty* 1999 AB PC, which references the Supreme Court of Canada’s decision in *Wholesale Travel Group Inc. v. The Queen* (1991) 84 D.L.R. (4th) 161, is very useful in the circumstances. At paragraph 6 of the *China* decision, the Judge states that, *inter alia*, the *Wholesale* case stands for the proposition that those who choose to participate in regulated activities must be aware of their responsibilities. Those responsibilities include full compliance with all health and safety standards applicable to those regulated activities.
- [29] Consequently, the fact that Executive Officer Meiklejohn did not inform the Appellant of the non-compliance of the windows during the first inspection some five (5) years ago is inconsequential and not a reasonable ground for an appeal.
- [30] Therefore, in reviewing the facts and the submissions of the parties, the Board does not consider it appropriate to extend the time within which the Appellant is to file his appeal.

Conclusion

- [31] For the above reasons, the Board has unanimously decided not to grant the Appellant’s request for an extension of time to file the Notice of Appeal.
- [32] The Order of June 26, 2017 remains in force.


Denis Lefebvre, Chair
On behalf of the Board

Date: August 29, 2017