

Appeals No.: 11-2017, 12-2017, 13-2017,
14-2017, 15-2017, 16-2017,
17-2017, 18-2017, 19-2017,
20-2017 and 21-2017

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 ELIENE
RATCH, PETER ARMSTRONG, WADE MORRILL,
DARRELL RYHORCHUK, JOYCE WARD, KATHLEN
KENTON, VAHEED HOJJATI, ROGER DERANGER, VINCE
RAIN, MICHAEL WAYLAND and BRENDA MCTAVISH OF
THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY
ALBERTA HEALTH SERVICES ZONE 4 - EDMONTON
DATED AUGUST 4, 2017

AND IN THE MATTER OF AN APPLICATION TO STAY THE
ORDER PENDING THE APPEAL

DECISION OF CHAIR

Hearing date

Stay hearing held September 19, 2017

Appearances

For the Appellants:

Darrell Ryhorchuk, Tenant, Unit 201 (Appeal No. 14-2017)

Joyce Ward, Unit 202 (Appeal No. 15-2017)

Brenda McTavish, Tenant, Unit 310 (Appeal No. 21-2017)

For the Respondent

Linda Svob, Counsel for Alberta Health Services (“AHS”)

Decision of the Chair

[1] The Chair has granted a partial stay of the Order until the Board renders its decision in the appeal.

Background

- [2] On June 20, 2017, Executive Office for Alberta Health Services, Ms. Meaghen Allen (“Allen”), issued an order (the “June Order”) to the owner of the housing premises located at 9322 149 Street, Edmonton (the “Premises”).
- [3] The Order was in regards to the common areas of the Premises as well as suites 101, 102, 103, 104, 106, 107, 109, 110, 111, 201, 203, 204, 205, 206, 207, 209, 210, 211, 301, 302, 303, 304, 305, 306, 307, 309 and 311.
- [4] The June Order required the owner to make extensive repairs to the Premises, too numerous to list here. The June Order is attached here as **Appendix “A”**.
- [5] On August 4, 2017, following a subsequent inspection of the Premises, Allen issued and served an order to vacate (the “August Order”) upon all occupants of the Premises on the basis that:
- (a) Violations as outlined in the June Order had not been addressed and the Premises did not meet the Housing Regulations and Minimum Housing and Health Standards.
 - (b) Asbestos containing materials were found within the premises and numerous building materials would need to be abated and /or removed in order to carry out the required repairs outlined in the June Order; and
 - (c) The aforesaid conditions could become injurious or dangerous to the public health.
- [6] The August Order stipulated that the Premises were to be vacated on or before August 31, 2017 if the work listed in the said order was not completed.
- [7] By letter dated August 28, 2017 (the “Letter”), Allen extended the August Order to September 30, 2017, as it was noted that in the last three (3) weeks (from the date of the Letter), “the required work to bring the building into full compliance has been occurring.”
- [8] The Appeal Secretariat received a Notice of Appeal from the following:
- (a) Joe Langford (unit unknown) dated August 17, 2017;
 - (b) Tenants of units 102, 103, 111, 201, 202, 206, 209, 211, and 301; and
 - (c) Brenda McTavish, of unit 310, dated August 18, 2017
- [9] On September 5, 2017, Joe Langford withdrew his appeal.
- [10] The appeal hearing date has not been set at the time of the stay hearing.
- [11] The stay application was heard on September 19, 2017 at 1:00 PM by telephone conference.

Issue

[12] Whether a stay of the August Order ought to be granted.

Submissions of the Appellants

[13] The Appellants submit that work is well under way and that none of the outstanding work poses a threat to public health and safety.

[14] With respect to the common areas of the building, asbestos abatement is being completed by a qualified contractor using industry-approved methodology.

[15] With respect to the unit 201, the Appellant, Darrell Ryhorchuk, submits that all work is done (except for the damage in the bathroom ceiling from an apparent leak from the unit above) and therefore there is no reason why he could not continue living in the unit. He further submitted that he was planning on moving out at the end of the month in any event to allow work in the washroom to be completed.

[16] The Appellants further submit that there is nowhere else to go if they were asked to leave – they would be without any accommodations.

Submissions of the Respondent

[17] With respect to unit 201, the Respondents submit that there is likely an issue with mould in the bathroom. That is, once the drywall is cut open (to complete repairs from an apparent leak from the unit above) mould will become a serious health issue. However, work has not yet started in the unit to deal with this problem.

[18] With respect to the common areas, the Respondents agree with the Appellants that the asbestos work conforms to all required health and safety protocols. However, there was an apparent issue with homeless persons entering upon the premises at night. It appears that this issue has been dealt with via police intervention.

[19] The Chair has reviewed all items listed in the Order with respect to the common areas. While most of the items have been repaired, the Respondent has submitted that at least two (2) serious issues remain outstanding: mould (that was apparently painted over) and the foundation, which may put the structural integrity of the building at risk. With respect to the second item, AHS is waiting for a report from a structural engineer. However, it was confirmed that there is no imminent danger of collapse of the building.

[20] Referring to the *RJR McDonald* test, the Respondent submits that the tenants have had plenty of time to find alternate accommodations. As such, they Appellants have not been able to demonstrate irreparable harm.

[21] On a balance of convenience, counsel for AHS submits that the balance favours the health and safety of the tenants. Therefore, a stay of the order would not be appropriate.

[22] Finally, the Respondent submits that if the Chair granted a stay, it would apply to the entirety of the Order. That is to say, the Chair could not issue a partial stay, or a stay that would only apply to portions of the Premises.

The Law

[23] The Chair of the Board is empowered to grant a stay pursuant to section 6 of the *Public Health Act*, which states as follows:

6. An appeal taken pursuant to section 5 does not operate as a stay of the decision appealed from except so far as the chairs or vice-chair of the Board so directs.

[24] I do not read that section as to suggest that the Chair cannot grant partial stays. In fact, in this case, it may be appropriate to consider the circumstances of the common area and/or each individual unit separately. That is to say, it may be necessary to refuse a stay for some units and not others. In my view, the wording of the Act is sufficiently broad as to empower me to grant a partial stay.

[25] A stay postpones the enforcement of the Order until the appeal is heard and decided by the Board. The test to be applied is set out in the Supreme Court of Canada decision in *RJR McDonald Inc. v. Canada*. The test has three components:

- i. There must be a serious issue to be determined;
- ii. The Appellant must demonstrate irreparable harm if a stay is not granted; and
- iii. There must be an analysis of the balance of convenience, which includes taking into account the public interest.

[26] The first part of the test has a low threshold. It is sufficient that the Chair be satisfied that the appeal is neither frivolous nor vexatious.

[27] Concerning irreparable harm, the question is whether refusing to grant the stay would so adversely affect the Appellant's interest that the harm could not be remedied if the Board eventually overturns the decision appealed. In *RJR McDonald*, the Court noted that the word "irreparable" refers to the nature of the harm suffered, rather than its magnitude. It pointed out that the harm is that which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[28] With respect to the balance of convenience, the Court acknowledged that the factors in assessing the balance of convenience are numerous and will vary in each case. The Court said it would be unwise to attempt to list the various matters that may need to be taken into consideration for that reason.

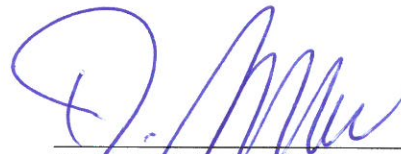
Reasons

[29] There is no question that the issue to be determined is serious; therefore the first part of the test is made out.

- [30] With respect to irreparable harm, the fact that some residents will be unable to find accommodations will, in my view, cause irreparable harm. That is to say, a tenant who finds him/herself without a home will not be able to recuperate his or her losses if successful at the Appeal. I am not persuaded by the Respondent's submissions that the tenants have had sufficient time to find alternate accommodations. The availability of appropriate housing for those who are not financially well off is, in most cases, very limiting.
- [31] Given the current state of the Premises, the repairs already completed and on-going work, I am of the view that the inconveniences are tipped in favour of granting a partial stay of the Order.

Conclusion

- [32] For the above reasons, I grant a partial stay of the Order until the Board renders its decision in the Appeals.
- [33] Of the ten Appellants, only three have attended at the stay hearing. Accordingly, I grant a stay for the tenants of units 201, 202 and 310.
- [34] I am unable to grant a stay in favour of the other Appellants, as they were not present at the stay hearing and accordingly, no submissions or information were provided relating to the merits of stay applications by them. However, barring any exceptional circumstances, the Chair may be inclined to grant a stay for those other Appellants. As such, since the reason for non-attendance is unknown, the Chair is prepared to hear a stay application from those Appellants at a later date.



Denis Lefebvre, Chair
Public Health Appeal Board

Date: September 29, 2017