

PUBLIC HEALTH APPEAL BOARD

IN THE MATTER OF THE PUBLIC HEALTH ACT,
CHAPTER P-37, R.S.A. 2000
AND ITS REGULATIONS

IN THE MATTER OF A STAY APPLICATION TO
THE CHAIR OF THE PUBLIC HEALTH APPEAL BOARD BY SARAH FASSMAN,
1443028 ALBERTA LTD, GOHAR TASNEEM, HOME PLACEMENTS SYSTEMS and
GOHAR (CARMEN) PERVEZ OF THE EXECUTIVE OFFICER'S ORDER
ISSUED BY ALBERTA HEALTH SERVICES
ZONE 4 EDMONTON
DATED AUGUST 27, 2015
STAY HEARING HELD SEPTEMBER 21, 2015

Appearances

Gohar (Carmen) Pervez, Appellant

Ivan Bernardo, Legal Counsel, Alberta Health Services/Respondent

Decision

The Chair has decided not to grant a stay of the Order.

Introduction

The Order of an Executive Officer Unfit for Human Habitation Order to Vacate dated August 27, 2015 was issued pursuant to the *Public Health Act*, the *Housing Regulation* Alberta Regulation 173/99 and the *Minimum Housing and Health Standards*.

The Order set out contraventions of the *Act*, *Regulations* and *Minimum Housing and Health Standards* for a residential rental property located at 11234 – 86 Street, Edmonton, Alberta.

The Order directed the Appellants to immediately pursue certain work and analyses of air quality in the premises, declared the premises unfit for human habitation and ordered the occupants to vacate the premises on or before September 11, 2015.

An appeal hearing date has not yet been set.

Issue

Whether a stay of the Order of an Executive Officer dated August 27, 2015 ought to be granted.

Appellants' Submissions

The Appellants advised that there was a serious issue to be tried at the appeal hearing as the Order was the result of a witch hunt by Alberta Health Services. Permission had recently been granted for a secondary suite in the premises which the community opposed and this resulted in media coverage. The community placed pressure on Alberta Health Services and they became biased and abused their powers in issuing the Order.

The Appellants submitted there was no sewer leak on the premises or air quality issues as was determined by experts in these fields. An unfit for human habitation and order to vacate would not have been issued had Alberta Health Services completed a thorough inspection of the premises and a work or repair order would have been more appropriate in the circumstances. The Appellants have other properties and have not been asked to complete air quality testing in the past.

In addition, there was no immediate health risk to the public as Alberta Health Services gave the tenants 15 days to vacate.

Finally, Alberta Health Services could have revised the Order upon receipt of experts' reports that confirmed there was no sewage leak or air quality issues.

With respect to irreparable harm that the Appellants would suffer if a stay was not granted, they submitted that the tenants had to vacate the premises, a pending sale of the premises may not close, the Notice of Health Hazard registered on the property's title would give the appearance they do not properly care for the property and there may be more media attention.

Regarding an assessment of the inconveniences of not granting a stay, the Appellants submitted they have tried to work with the Executive Officer that issued the Order to no avail and they questioned the protocol and exercise of discretion in these circumstances.

In addition, there would be no harm in varying the Order to a work or repair order as there were only minor contraventions to be addressed on the premises at this time.

Alberta Health Services' Submissions

Alberta Health Services submitted that the Appellants did not meet the test for granting a stay set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and the Alberta Environmental Appeals Board in *Gas Plus Inc. (Re)*, [2011] A.E.A.B.D. No. 12.

With respect to irreparable harm, Alberta Health Services submitted the Appellants provided no evidence of a pending sale of the property and that a stay of the Order would not remove the Notice of Health Hazard from the property's title.

Regarding the tenants having to vacate the premises, the potential harm to the tenants was not harm to the Appellants which is required in part two of the test. They also submitted that this was not an inconvenience to be considered in the third part of the test as the tenants had already vacated the premises.

The Respondent submitted that any media attention that might result from the Order being issued would not be diminished with a stay of the Order as a stay would not vary or reverse the Order.

With respect to the balance of inconveniences, the Respondent submitted that for the Appellants to offset the public interest considerations of the *Public Health Act*, they would have to demonstrate a more compelling public interest and they had not done so.

Finally, Alberta Health Services pointed out that the Appellants were requesting a variation or reversal of the Order which is not a remedy available in a stay application.

Reasons

The Board is empowered to grant a stay pursuant to section 6 of the *Public Health Act*. This section states:

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

A stay postpones the enforcement of the Order until the appeal is heard and decided by the Public Health Appeal Board. The test for whether a stay should be granted is set out by the Supreme Court of Canada in *RJR- MacDonald*. It is a three part test:

1. Is there a serious question to be tried?
2. Would the Appellant suffer irreparable harm if the stay was not granted?
3. Assess the balance of inconvenience to the Appellant if the stay is not granted and the inconvenience to the Respondent if the stay is granted. In this part of the test the inconvenience of other parties may be considered as well as the public's interest.

Application of the test

Is there a serious question to be tried? This part of the test has a low threshold and can be met if the appeal is not frivolous or vexatious. The Appellants showed the appeal is not frivolous or vexatious.

The second part of the test is whether the Appellants would suffer irreparable harm if the stay was not granted. The Appellants submitted they would suffer irreparable harm for several reasons.

1. Pending sale of the property may not close as a result of the Order and the Notice of Health Hazard registered on the property's title.

The Appellants provided no evidence of a pending sale of the property. Orders of this nature are typically registered on the titles to properties as Notices of Health Hazard but a stay of the Order would not remove a Notice of Health Hazard from the title to the property or operate to vary or vacate the Order. This does not constitute irreparable harm as contemplated by the test as this potential harm is not prevented or reduced by granting a stay of the Order.

2. Tenants ordered to vacate the premises.

This potential harm does not constitute harm to the Appellants which is required in the second part of the test.

3. Notice of Health Hazard registered on the property's title would give the appearance they do not properly care for the property.

Again, a stay of the Order would not remove a Notice of Health Hazard from the title to the property or operate to vary or vacate the Order. This potential harm would not be prevented by granting a stay of the Order.

4. Media attention.

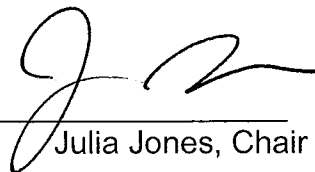
The Appellants submitted they would suffer irreparable harm as a result of the media attention the Order would cause. The premises had recently been approved for a secondary suite contrary to the wishes of some residents in the community and the Appellants submitted that an unfit for human habitation order would result in further negative media attention. Again, this potential harm would not be avoided by granting a stay as it would not vary or vacate the order but merely suspend its enforcement until the appeal was heard.

The Appellants did not show that they would suffer from irreparable harm if the stay was not granted

The third part of the test is an assessment of the inconveniences to the Appellants if the stay is not granted, balanced against the inconveniences to Alberta Health Services if the stay is granted. As the Appellant failed to meet the second part of the test, it is not necessary to assess the inconveniences of the parties. However, I would point out that the inconveniences, as submitted by the Appellants, of not granting a stay would not offset the public interest considerations of the *Public Health Act*.

Finally, the Appellants submitted that Alberta Health Services could have revised the Order when it received reports from experts that confirmed there was no sewage leak or air quality issues. A stay suspends the enforcement of an order, it does not revise an order. The Appellants' submissions with respect to varying or revising the Order ought to be presented at the appeal hearing where the Board may confirm, vary or reverse the Order.

For the above reasons, the Chair of the Public Health Appeal Board has not granted a stay of the Order.

Per: 

Julia Jones, Chair

Date: September 24, 2015