

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 5, DATED August 7, 2019.**

PANEL: Denis Lefebvre, Esq., Chair
Wendy Lickacz, Member
Barb Rocchio, Member
David Rolfe, Member

BETWEEN:)	
)	
)	
ESTATE of JOSH DECKER (the)	Shelley Baron,
“ESTATE”) and SHELLY BARON,)	for the Appellants
Personal Representative of the ESTATE)	
)	
(Appellants))	
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	Linda Svob, Legal Counsel
)	Alberta Health Services,
(Respondent))	for the Respondent
)	
)	
)	Stuart Chambers,
)	McLennan Ross LLP,
)	Independent Counsel for the Board
)	
)	Heard: January 14, 2020

WRITTEN REASONS OF THE BOARD

A notice of appeal was received on September 5, 2019. This matter came before a panel (the “Panel”) of the Public Health Appeal Board (the “Board”) on January 14, 2020, in Edmonton, Alberta.

The Appeal

[1] This is an appeal (the “Appeal”) to reverse an order of an Executive Officer (“EO”) dated August 7, 2019 (the “Order”).

Timing of Appeal

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

[3] The Public Health Appeal Board (“PHAB”) Secretariat received a notice of the appeal dated August 7, 2019 (the “Notice of Appeal”) on September 5, 2019.

[4] The Appellant advised the Secretariat that she only received the Order on August 30 2019. Given that there were no indications from the Respondent as to when the Order was served upon the Appellant, the PHAB accepted the Notice of Appeal as being filed on time.

Procedural History

[5] On December 16, 2019, the Panel heard a moot application with respect to this Appeal. Based on the submission of the Parties, the Panel concluded that the Appeal was not moot. Accordingly, the matter was set down for a hearing.

[6] On December 17, 2019, the Chair issued a directive allowing the Appellants’ representative and the EO to appear by teleconference pursuant to section 4.3.2 of the PHAB Rules of Procedure.

Board Decision and Reasons

[7] Following the hearing, the Panel rendered its decision to confirm the Order on January 16, 2020 following the Panel’s deliberation (the “Decision”).

[8] The Reasons for the Decision are provided herein.

Background

[9] The subject matter property is a detached home (the “Premises”). The Premises is located in Redcliff, Alberta, and is municipally described as 606-Broadway Avenue East and is legally described as Plan 755AD; Block 78; Lots 10-12.

[10] Following a complaint from the tenants dated July 30, 2019, the EO attended at the Premises on August 1, 2019 to conduct an inspection (the “Inspection”). Based on the Inspection, the EO issued the Order. The Order is reproduced here (*verbatim*):

WHEREAS I, an Executive Officer of Alberta Health Services, have inspected the above premises pursuant to the provisions of the Public Health Act, RSA 2000, c. P-37, as amended;

AND WHEREAS such inspection disclosed that the following conditions exist in and about the above noted premises which are or may become injurious or dangerous to the public health or which might hinder in any manner the prevention or suppression of disease, namely:

Appeal 05-2019

- a. The handle for the master bedroom window is broken off.
- b. There is a small hole in a wall in the master bedroom.
- c. The main floor bedroom window does not meet egress requirements; the opening hardware of this awning window obstructs escape.
- d. The thermostat appears old, and reportedly, does not work.
- e. The central air conditioning system does not work.
- f. The *Frigidaire* oven yields no heat when it is turned on.
- g. Track lighting in the kitchen does not work.
- h. There are a few holes in the kitchen wall.
- i. Wooden flooring of the east side deck is rotted in a few areas.
- j. A smoke alarm is missing just above the basement stairs.
- k. A hand rail is not provided for the stairs leading to the basement.
- l. The basement bedroom floor is not finished.
- m. The window in the basement bedroom is cracked and broken.
- n. There are three loose and exposed electrical wires in the panel box.
- o. There are a few holes in the basement bedroom wall.
- p. The basement washroom neither has a ventilation fan nor an openable window.
- q. The clothes dryer does not work.
- r. The clothes washer provided malfunctions, resulting in a continuous fill cycle and associated flooding.
- s. The floor drain in the laundry room backs up during washing cycles.
- t. The back door's window frame is damaged.

AND WHEREAS such inspection disclosed that the following breaches of the Public Health Act and the *Housing Regulation*, Alberta Regulation 173/99, and the *Minimum Housing and Health Standards* exist in and about the above noted premises, namely:

- a. The handle for the master bedroom window is broken off which is in contravention of section III 2 (b) (i) & (ii) of the Minimum Housing and Health Standards, which states that: "All windows and exterior doors shall be; maintained in good repair, free of cracks and weatherproof. In housing premises intended for use during the winter months, windows in habitable rooms shall protect against cold weather through the provision of a storm sash, double glazing, or other durable thermal/air resistant barrier as may be approved by the Executive Officer."
- b. There is a small hole in a wall in the master bedroom which is in contravention of section III 5 of the Minimum Housing and Health Standards which states that: "All walls, windows, ceilings, floors, and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean."
- c. The main floor bedroom window does not meet egress requirements; the opening hardware of this awning window obstructs escape which is in contravention of section III 3 (b) of the Minimum Housing and Health Standards which states that: "For buildings of 3 storeys or less and except where a bedroom door provides access directly to the exterior or the suite is sprinklered, each bedroom shall have at least one outside window which may be opened from the inside without the use of tools or special knowledge. (i) Windows

referred to above shall provide unobstructed openings with areas not less than 0.35 m² (3.8 ft²), with no dimension less than 380 mm (15”).”

- d. The thermostat appears old, and reportedly, does not work which is in contravention of section IV 8 (a) of the Minimum Housing and Health Standards which states that: “All heating facilities within a housing premises are to be properly installed and maintained in good working condition, and be capable of safely and adequately heating all habitable rooms...”
- e. The central air conditioning system does not work which is in contravention of section 5(2) of the Housing Regulation, Alberta Regulation 173/1999 With amendments up to and including Alberta Regulation 38/2018, which states that: “No person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention or suppression of disease.”
- f. The Frigidaire oven yields no heat when it is turned on which is in contravention of section IV 14 (a) of the Minimum Housing and Health Standards which states that: “Every housing premises shall be provided with a food preparation area, which includes: (iv) a stove and a refrigerator that are maintained in a safe and proper operating condition. The refrigerator shall be capable of maintaining a temperature of 4 degrees C. (40°F).”
- g. Track lighting in the kitchen does not work which is in contravention of section IV 11 of the Minimum Housing and Health Standards which states that: “Every housing premises shall be supplied with electrical service. Outlets, switches and fixtures shall be properly installed and shall be maintained in a good and safe working condition.”
- h. There are a few holes in the kitchen wall which is in contravention of section III 5 of the Minimum Housing and Health Standards which states that: “All walls, windows, ceilings, floors, and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean.”
- i. Wooden flooring of the east side deck is rotted in a few areas which is in contravention of section III 3 (c) of the Minimum Housing and Health Standards which states that: “Inside or outside stairs or porches including all treads, risers, supporting structural members, rails, guards and balconies, shall be maintained in good repair and shall comply with the requirements of the Alberta Building Code or a Professional Engineer design.”
- j. A smoke alarm is missing just above the basement stairs which is in contravention of section IV 12 of the Minimum Housing and Health Standards which states that: “Smoke alarms within dwellings shall be installed between each sleeping area and the remainder of the suite and, where hallways serve the sleeping areas; the smoke alarms shall be installed within the hallway. (a) Smoke alarms shall be operational and in good repair at all times.”
- k. A hand rail is not provided for the stairs leading to the basement which is in contravention of section III 3 (c) of the Minimum Housing and Health Standards which states that: “Inside or outside stairs or porches including all treads, risers, supporting structural members,

rails, guards and balconies, shall be maintained in good repair and shall comply with the requirements of the Alberta Building Code or a Professional Engineer design.”

- l. The basement bedroom floor is not finished which is in contravention of section III 5 of the Minimum Housing and Health Standards which states that: “All walls, windows, ceilings, floors, and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean.”
- m. m. The window in the basement bedroom is cracked and broken which is in contravention of section III 2 (b) (i) & (ii) of the Minimum Housing and Health Standards which states that: “All windows and exterior doors shall be; maintained in good repair, free of cracks and weatherproof. In housing premises intended for use during the winter months, windows in habitable rooms shall protect against cold weather through the provision of a storm sash, double glazing, or other durable thermal/air resistant barrier as may be approved by the Executive Officer.”
- n. There are three loose and exposed electrical wires in the panel box which is in contravention of section IV 11 of the Minimum Housing and Health Standards which states that: “Every housing premises shall be supplied with electrical service. Outlets, switches and fixtures shall be properly installed and shall be maintained in a good and safe working condition.”
- o. There are a few holes in the basement bedroom wall which is in contravention of section III 5 of the Minimum Housing and Health Standards which states that: “All walls, windows, ceilings, floors, and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean.”
- p. The basement washroom neither has a ventilation fan nor an openable window which is in contravention of section IV 7 (c) of the Minimum Housing and Health Standards which states that: “All rooms containing a flush toilet and/or bathtub or shower shall be provided with natural or mechanical ventilation.”
- q. The clothes dryer does not work which is in contravention of section 5(2) of the Housing Regulation, Alberta Regulation 173/1999 With amendments up to and including Alberta Regulation 38/2018, which states that: “No person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention or suppression of disease.”
- r. The clothes washer provided malfunctions, resulting in a continuous fill cycle and associated flooding which is in contravention of section 5(2) of the Housing Regulation, Alberta Regulation 173/1999 With amendments up to and including Alberta Regulation 38/2018, which states that: “No person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention or suppression of disease.”
- s. The floor drain in the laundry room backs up during washing cycles which is in contravention of section IV 6 (a) & (c) of the Minimum Housing and Health Standards which states that: “The plumbing system and the sanitary drainage system... shall be

maintained in a proper operating condition. All plumbing fixtures shall be serviceable, free of from leaks, trapped and vented to the outside.”

- t. The back door’s window frame is damaged which is in contravention of section III 2 (b) (i) & (ii) of the Minimum Housing and Health Standards which states that: “All windows and exterior doors shall be; maintained in good repair, free of cracks and weatherproof. In housing premises intended for use during the winter months, windows in habitable rooms shall protect against cold weather through the provision of a storm sash, double glazing, or other durable thermal/air resistant barrier as may be approved by the Executive Officer.”

AND WHEREAS, by virtue of the foregoing, the above noted premises is hereby declared to be **Closed for Tenant Accommodation Purposes.**

NOW THEREFORE, I hereby **ORDER** and **DIRECT**:

1. That the occupant(s) vacate the above noted premises on or before September 6, 2019.
2. That the owner(s) immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
 - a. Repair or replace, as appropriate, all items noted pertaining to broken windows or window frames.
 - b. Properly repair all damaged walls.
 - c. Replace the main floor bedroom window to afford egress. Ensure the new window provides an unobstructed opening with the stipulated area and dimensions.
 - d. Install a new and working thermostat.
 - e. Repair or replace all malfunctioning or non-functional appliances (air conditioner, oven, clothes dryer, and clothes washer).
 - f. Install a new and working light fixture in the kitchen.
 - g. Rebuild the wooden flooring of the east side deck.
 - h. Install a new smoke alarm above the basement stairs.
 - i. Install the needed handrail.
 - j. Properly and professionally finish the basement bedroom floor.
 - k. Secure and cap, or otherwise render safe, the three wires in the panel box.
 - l. Install an openable window or a ceiling fan inside the basement washroom.
 - m. Properly and professionally correct the floor drain back-ups.
3. That until such time as the work referred to in paragraph 2 is completed to the satisfaction of the undersigned, or an Executive Officer of Alberta Health Services, the above noted premises shall remain vacant, secured from unauthorized entry, and closed for tenant accommodation.

The above conditions were noted at the time of inspection and may not necessarily reflect all deficiencies. You are advised that further work may be required to ensure full compliance with the Public Health Act and regulations, or to prevent a public health nuisance.

DATED at Medicine Hat, Alberta, August 7, 2019

Appeal 05-2019

Subhendra S. Dharampaul, MLT, BSc, MDiv, CPHI(C)
Executive Officer
Alberta Health Services

Grounds of the Appeal

[11] The Notice of Appeal alleges:

- (a) That most of the items listed in the Notice of Appeal do not affect the quality of living in the home.
- (b) That the premises are empty and will remain so until sold.

Legal Issues

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

- (a) Whether the EO erred in finding that the items listed in the Order in fact constitute a violation under the Act, the Housing Regulation and/or the *Minimum Housing and Health Standards* (the “MHHS”); and
- (b) Whether the Premises should be closed for tenant accommodation.

Jurisdiction

[13] There are no objections to the Panel’s jurisdiction to hear the Appeal.

Documents/Exhibits

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

- (a) **Exhibit 1** – Binder of documents provided by AHS.

Submissions of the Appellants

[15] The Appellant submitted the following information in regard to each of the items identified in the Order as work to be completed:

Repair or replace, as appropriate, all items noted pertaining to broken windows or window frames.

- (a) The handle is broken off on the bedroom window. The hardware that obstructs escape could be removed but she was told by the EO that it would still not meet AHS standards and that the entire window would have to be replaced. There are two windows in the bedroom so there is an exit provided in an emergency.

Properly repair all damaged walls.

- (b) The hole in the wall is small and is in no way a health hazard. The tenants are responsible for the holes.

Replace the main floor bedroom to afford egress. Ensure the new window provides an unobstructed opening with the stipulated areas and dimensions.

- (c) The room being used for a bedroom on the main floor is not a bedroom. It has a full glass door and was intended for use as a den or office.

Install a new and working thermostat.

- (d) The thermostat is old but that doesn't mean it doesn't work.

Repair or replace all malfunctioning or non-functional appliances (air conditioner, oven, clothes dryer and clothes washer).

- (e) She was never told by the tenants that the air conditioner didn't work and it isn't required to be provided as a health standard for living in the home. It is not wired into the house.
- (f) The oven works. The breaker had been shut off.
- (g) The clothes dryer works.
- (h) The washer had been removed and placed in the garage as the tenants wanted to use their own.

Install a new and working light fixture in the kitchen.

- (i) The kitchen has a large overhead ceiling light and the track light is not necessary to see in the kitchen area. The track light has never worked since the house was purchased.

Rebuild the wooden flooring on the east side deck.

- (j) Some boards do need to be replaced.

Install a new smoke alarm above the basement stairs.

- (k) The smoke alarm should be replaced if someone was to move into the home. The smoke detector is an older model and has no battery.

Install the needed handrail.

- (l) The handrail is the original one in the house and the Appellants are of the view that they are compliant with the MHHS.

Submissions of the Respondent

[16] The Respondent indicated that under the Act, owners have an obligation to comply with the terms and conditions of the Housing Regulations and the MHHS. The Respondent stated that the MHHS exist to ensure all Albertans live in safe conditions and they provide minimum conditions that make housing premises safe.

[17] The EO stated that when he inspected the premises on August 1, 2019, the premises were occupied by tenants and he observed the following violations in contravention of the MMHS and the Housing Regulations (Photographs are found in Tabs 3, 9 & 11 of Exhibit 1):

- (a) The handle for the master bedroom window is broken off.
- (b) There is a small hole in the in a wall in the master bedroom.
- (c) The main floor bedroom window does not meet egress requirements; the opening hardware of the awning window obstructs escape.
- (d) The thermostat appears old, and reportedly does not work.
- (e) The central air conditioning system does not work.
- (f) The Frigidaire oven yields no heat when it is turned on.
- (g) Track lighting in the kitchen does not work.
- (h) There are a few holes in the kitchen wall.
- (i) Wooden flooring of the east side deck is rotted in a few areas.
- (j) A smoke alarm is missing just above the basement stairs.
- (k) A hand rail is not provided for the stairs leading to the basement.
- (l) The basement floor is not finished.
- (m) The window in the basement bedroom is cracked and broken.
- (n) There are three loose and exposed electrical wires in the panel box.
- (o) There are a few holes in the basement bedroom wall.
- (p) The basement washroom neither has a ventilation fan nor an openable window.
- (q) The clothes dryer does not work.
- (r) The clothes washer provided malfunctions, resulting in a continuous fill cycle and associated flooding.

- (s) The floor drain in the laundry room backs up during washing cycles.
- (t) The back door's exterior window frame is damaged.

[18] The EO stated that the Order explains why items e, q, and r contravene the Alberta Housing Regulations and why the remainder of items contravene the MHHS.

[19] When questioned about each item in the Order, the EO provided the following additional *viva voce* evidence:

- (a) The handle for the master bedroom window was broken off which could result in a personal injury (item a).
- (b) The holes in the drywall (items b, h & o) make the walls hard to clean and for easy for pests to enter.
- (c) The tenants complained of discomfort due to the lack of air conditioning (item e). He stated that living in an environment in the summer without central air conditioning could impact the health and brain functioning of the tenant e.g. memory and that lack of a functioning clothes dryer (item q) could affect the mental health and the enjoyment of life by the tenants experiencing it at the time.
- (d) The rotten wooden flooring on the east side deck could result in an individual having a leg injury or fracture and even death (item i). He stated that this finding is truly a violation.
- (e) Deficiencies regarding electrical services (items g & n) and the missing smoke alarm (item j) and having a second smoke alarm that was not working are always a concern in regards to fire safety.
- (f) The lack of ventilation in the basement bathroom could result in moisture collecting and/or mold (item p).
- (g) The back door's exterior window frame is damaged which may affect weather proofing (item t).

[20] The EO stated that if things are in disrepair according to the MHSS and not in good working condition, generally, they do not get better they just get worse. He stated that it was the sum of all of these violations indicated the overall neglect of the home and resulted in the Closed for Tenant Accommodation Order. If the Order is not complied with, the conditions of the premises might become injurious to the health of the public or may hinder the prevention and suppression of disease.

[21] The EO stated that he did not register the Order on the title of the premises.

[22] The Respondent submits that the Order is supported by the EO's findings during the Inspection and accordingly, should be confirmed by the Board.

Analysis and Reasons

[23] It appears from the Order and the EO's testimony that, the moment something is not working, is broken or is missing, automatically results in an violation under the Act, the Housing Regulations or the MHHS. However, this cannot be the case, nor should it be. In order for something to be considered a violation under the Act, the Housing Regulations or the MHHS, a health hazard must be identified.

[24] To illustrate this point, let us look at the issue of missing electrical covers, for example. Missing plate covers do not, by themselves, constitute a violation under the MHHS. The follow-up question is whether a missing cover might cause a safety hazard. In *R. v George*¹ Judge L.E. Malin considered whether a missing cover plate on an electrical outlet in a basement bedroom establishes a contravention of part IV, section 11 of the MHHS:

[...] The matter then comes down to the question of whether the absence of the cover plate is proof that it has not been "maintained in good a safe working condition." The photograph of the outlet clearly shows that the covers plate is missing. The mere absence of a cover plate does not, by itself and in this instance, prove that the outlet was not in a good working condition or in safe working condition or that it compromised the safety of the housing premises. The charge under count 35 is dismissed.

[25] As such, it is expected that EOs will not simply list missing or broken items as violations without determining if the thing that is missing or that is broken would compromise the safety of the tenant living in the Premises.

[26] The Respondent has identified a broken handle of one of the master bedroom windows as being a contravention of Part III, section 2(b)(i) and (ii) of the MHHS. That section reads as follows:

(b) Windows and exterior doors

- (i) All windows and exterior doors shall be; maintained in good repair, free of cracks and weatherproof.
- (ii) In housing premises intended for use during the winter months, windows in habitable rooms shall protect against cold weather through the provision of a storm sash, double glazing, or other durable thermal/air resistant barrier as may be approved by the Executive Officer.

[27] Based on the evidence presented at the Hearing, it was revealed that that handle for the window crank is missing. As such, it is not possible to open and close the window. That fact that the window cannot be opened does not mean it is in disrepair; not all windows are openable. The evidence also shows that the windowpane was in good working order as was the window's seal, which was not compromised in any way. This means that the window fully protects the tenants

¹ 2018 ABPC 20 at para. 124

from the outside weather. The Panel fails to see how the fact that a window cannot be opened creates a health hazard.

[28] At paragraph d. (page 2) of the Order, the EO states that “the thermostat appears old, and reportedly, does not work, which is in contravention of the part IV, section 8 (a) of the MMHS. That section states as follows:

8. Heating Facilities

- (a) All heating facilities within a housing premises are to be properly installed and maintained in good working condition, and be capable of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms within the building to a temperature of
 - (i) at least 22°C(71°F), or
 - (ii) maintained at a temperature of at least 22°C(71°F) when the control of the supplied heat in a dwelling is the responsibility of a person other than the occupant.

[29] The fact that a thermostat appears old does not mean that it is not in good working condition. The evidence that the thermostat allegedly did not work came from the tenants’ complaint that the air conditioning did not work. This is nothing more than hearsay evidence. In any event, the air conditioning never worked (as it was not wired) and was not part of the lease agreement. Even if it were part of the lease, a non-operational air conditioner is not a violation under the MMHS; Part IV, section 8 deals with heating, not air conditioning. Moreover, the Panel cannot accept the EO’s argument that he considers a non-operational air conditioner as harmful to the mental wellbeing of the tenants; there is nothing in the Act, the Housing Regulations or the MMHS that supports this.

[30] At paragraph e. (page 2) of the Order, the EO found that a non-operational air-conditioning is a violation of s. 5(2) of the Housing Regulations, which states that “[n]o person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention of suppression of disease.” During questioning by the Panel, the EO argued that a non-functioning air-conditioning could be injurious to the mental health of the tenants. When asked if a house without air-conditioning would be a violation under the Housing Regulations, the EO stated that it would not, but if a house did have air conditioning that did not work, this would be harmful because the tenants would expect it to work. The Panel cannot accept this logic. The Panel finds no violation under the Act, the Housing Regulations or the MMHS with respect to the lack of air conditioning in the Premises.

[31] At paragraph r. (page 3) of the Order, The EO found that the clothes washer malfunctioned, resulting in a continuous fill cycle and associated flooding, which is in contravention of s.5(2) of the Housing Regulation. However, the EO did not observe any malfunction and instead relied on the hearsay evidence of the tenants.

[32] The Appellants testified that the clothes washer belonged to the tenants and that the Appellants’ clothes washer was stored in the garage, as the Tenants insisted on using their own. If

said washer was in fact malfunctioning, then that responsibility lies with the tenants, not the Appellants.

[33] Given the foregoing, the Panel finds that the EO did not establish a violation under the Housing Regulation with respect to the clothes washer.

[34] At paragraph s. (page 3) of the Order, the EO states that the floor drain in the laundry room backs up during washing cycles which is contravention of part IV, section 6(a) and (c) of the MHHS, which states that “[t]he plumbing system and the sanitary drainage system...shall be maintained in a proper operating condition. All plumbing fixtures shall be serviceable, free from leaks, trapped and vented to the outside.” Again, the EO relied on the tenants’ hearsay evidence. During questioning by the Panel, the EO was unable to provide any substantiating evidence, such as stains left by flooding or any odor associated with the flooding. The Panel therefore finds that the EO erred in finding a violation under the MHHS.

[35] At paragraph t. (page 3) of the Order, the EO found that the back door’s window frame is damaged, which is in contravention of part III, section 2 (b) (i) and (ii) of the MHHS, which states:

2. Windproof, waterproof, weatherproof condition

...

(b) Windows and exterior doors

- (i) All windows and exterior doors shall be; maintained in good repair, free of cracks and weatherproof. (ii) In housing premises intended for use during the winter months, windows in habitable rooms shall protect against cold weather through the provision of a storm sash, double glazing, or other durable thermal/air resistant barrier as may be approved by the Executive Officer.

[36] The section of the MHHS deals with the windproof, waterproof and weatherproof condition of windows and doors, not their aesthetics. The evidence provided during the hearing and in particular during questioning of the EO by the Panel confirmed that only the plastic frame (which is only a cover for aesthetic purposes), which covers the outer edges of the window was cracked. That is, the windowpane was not affected, nor was the weatherproofing, windproofing or waterproofing of the window. Moreover, the door properly functioned and the seal around the door and the window was intact. Ms. Baron testified that the frame covering the outer edges of the window was cracked when would-be thieves attempted forced entry. The only thing that this caused was an unsightly crack. Otherwise, the back door and its window are in good repair.

[37] The Panel finds that the EO erred in finding a violation under the MHHS with respect to the backdoor window.

Findings and Conclusion

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

- (a) The EO has erred in finding that items at paragraphs a., d., e., (page 2) and r., s., and t. (page 3) of the Order are violations under the Act, the Regulations and/or the MHHS.
- (b) The remaining items are confirmed as being violations.
- (c) The Order shall be varied (the “Varied Order”); and
- (d) The Premises shall remain closed to tenant accommodations until such time as the Varied Order is complied with to AHS’s satisfaction.

[39] The Order is hereby varied (the “Varied Order”) as follows:

- (a) Paragraphs a., d., e., r, s., and t. at page 1 of the Order shall be removed;
- (b) Paragraphs a., d., e., r., s., and t. at pages 2, 3 and 4 of the Order shall be removed; and
- (c) Paragraph 2 at page 4 of the Order shall be amended to reflect the removal of the paragraphs as stipulated above.

[40] AHS was directed to issue the Varied Order within 10 days of service of the Decision and AHS has provided confirmation that this was done.

[41] The Varied Order shall remain in force until such time as AHS rescinds it in accordance with the *Public Health Act*.

Original Signed

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

Date: June 15, 2020