

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 October 21, 2019**

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

BETWEEN:)	
)	
)	
RONALD CLARKE)	Wayne McIssac, Agent,
)	for the Appellant
(Appellant))	
)	
- 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 13, 2020

REASONS FOR DECISION OF THE BOARD

A notice of appeal was received on November 15, 2019. This matter came before a panel of the Public Health Appeal Board (the “Panel”) on January 13, 2020, in Edmonton, Alberta.

The Appeal

[1] This is an appeal (the “Appeal”) to reverse an order of an Executive Officer (“EO”) dated October 21, 2019 (the “Order”).

Board Decision

[2] The Panel rendered its decision to confirm the Order on January 16, 2020 following the Panel’s deliberation.

[3] The written reasons for the Board’s decision are provided herein.

Background

[4] The subject matter property is a residential garage (the “Premises”). The Premises is located on a property municipally described as 10946 154 Street NW, Edmonton (the “Property”).

[5] On October 9, 2019, the EO attended at the Premises. The EO knocked on the door of the Premises. The person who answered the door appeared to be residing there. He allowed the EO and the RISC team to enter. The EO inspected the Premises (the “Inspection”). The EO saw evidence that the individual resided at the Premises.

[6] The Inspection revealed that the Premises suffered from a number of deficiencies in alleged breach of either the *Minimum Housing and Health Standards* (the “MHHS”) or the *Housing Regulations* (the “Regulations”).

[7] On October 21, 2019, after consulting with management, the EO issued the Order.

[8] The Order required the tenant to vacate the Premises on or before October 31, 2019, as the Premises was unfit for human habitation. It also required the Appellant to effect repairs and to secure the Premises from unauthorized entry until the specified repairs are satisfactorily completed.

Timing of Appeal

[9] 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.

[10] The Health Appeal Board Secretariat received a notice of the appeal dated November 8, 2019 (the “Notice of Appeal”) on November 15, 2019. The Notice of Appeal was therefore filed too late.

Application to Extend Time to File the Appeal

[11] The Appellant was advised he would need to make an application to extend the time within which the Appeal may be accepted by the PHAB pursuant to s. 5(9) of the Act. .

[12] On December 6, 2019, a hearing (the “Application Hearing”) was held before the Panel to determine if the PHAB will accept the late service of the Notice of Appeal.

[13] Following the Application Hearing, the Panel accepted the late service of the Notice of Appeal. The Appeal was subsequently scheduled for a hearing.

Grounds of the Appeal

[14] The Notice of Appeal raises a number of points. However, the principal ground appears to be that the Notice of Appeal indicates that the Premises is not in fact a housing premises.

[15] A secondary point is that the Appellant appears to be unclear as to whether or not references in the Order are to the house or the Premises. The Notice of Appeal indicates that the house is the only “housing premises” on the property, and the Appellant generally denies each of the factual allegations made in the Order. However, as against the Premises, which is the focus of the Order, the Appellant says that it is not housing premises at all. The Appellant indicates that there was an individual who was given access to the Premises for storage and a workshop, but not for residential purposes. The Notice of Appeal also indicates that the alleged tenant previously lived in the house, but was ordered out of the house, presumably by AHS.

[16] The Appellant indicates that there are two garages on the Property in addition to the house. It would appear that the intent of the Order is to apply to a garage, but it is not clear which of the two – indeed the Order does not even indicate the presence of two garages on the Property.

[17] The Panel was able to decipher two (2) grounds of the Appeal:

- (a) Whether the Premises is in fact a housing premises; and
- (b) Whether or not the EO made various errors of fact in connection with the allegations that applies to at least one of the structures on the Property.

Legal Issues

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

- (a) Whether the Premises is a housing premises pursuant to the Regulations.
- (b) Whether the EO made any errors of fact with respect to one or more of the violations listed in the Order.

Jurisdiction

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

Documents/Exhibits

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

- (a) **Exhibit 1** –Binder with 12 tabs containing the document production of AHS
- (b) **Exhibit 2** – Diagram of the description and location of the Premises.
- (c) **Exhibit 3** – Aerial photo of the Property.

Submissions of the Appellants

[21] The Appellant stated that over the past several years, the Premises has frequently been used by homeless people. Until he received title to the Property approximately one year ago, the police would not respond to calls to address this problem. Since he now has title to the Property the police will now respond to calls. The Appellants submits that it is hard to see the Premises from the house due to the windows being frosted over or due to the leaves on the trees as it is on the back of the Property.

[22] The Appellant provided a diagram of the Property (Exhibit 2) showing that there are two garages on the property. The Premises is the garage at the back of the Property next to the back alley. The Appellant stated that neither garage houses a vehicle. He has never asked or received money for use of either garage or ever authorized anyone to live in the Premises.

[23] The Appellant claimed that the Premises is not a housing premise as no one was living there with his permission and that if the Premises refers to his house on the property, his house is compliant with the MHHS. The Premises was intended to house a vehicle but as he did not own a vehicle it was not used for that purpose. The Premises is unfinished. It has electricity but no water or sewage services. He stated that he has never rented the Premises and has no desire to rent it. He clarified that Premises is simply a “garage” not a “garage suite” as referred to in the AHS documentation. The Appellant provided an aerial photograph of the Property (Exhibit 3).

[24] The Appellant stated that after filing the Notice of Appeal, he received a letter dated December 12, 2018, from Kenneth Dong, Manager, Environmental Health Services at AHS, which clarified that the Premises referred to in the Order was the back garage, not his house.

[25] The Appellant gave evidence that a handyman (referred to as “Wade”) was living in his house in the spring of 2019 and made small repairs to the house during that time. He paid Wade \$100.00 to fix the gate in the back fence. During that time, he gave permission for Wade to use the Premises for storage and for a workshop for free while he was living in the house. He did not give Wade permission to sleep or cook in the Premises. His Agent, Wayne McIsaac, confirmed this information.

[26] AHS previously issued an order (still in effect) that the Appellant’s house was not to be used as a rental property but did not declare the house as unfit for human habitation (the “Previous Order”). The Previous Order was not appealed, as he did not want to have tenants. As a result of the Previous Order, he asked Wade to leave his house and Wade was looking for an apartment while continuing to use the Premises as a workshop. The Appellant stated that it was Wade’s practice to lie down to watch TV, therefore the TV was attached to the ceiling of the Premises.

[27] The Appellant advanced the following additional concerns related to the Order:

- (a) The Appellant stated that he cannot be responsible for keeping homeless people out of the Premises. Due to his health concerns, he does not go out to the Premises.
- (b) There were no homeless people living in the Premises while Wade was using it as a workshop and for storage. He does not have the funds to hire anyone to ensure the Premises is secure. The health of anyone using the Premises would be adversely affected by living there, so it should be the government's responsibility for ensuring that people don't live there. He confirmed that currently the Premises is boarded up and that the police were involved by screwing a plywood panel on the door so no one is able to enter the Premises.

[28] In summary, the Appellants argued that the requirements in the Order don't have to be met if no one is living there and that the Order is redundant and should be rescinded.

Submissions of the Respondent

[29] On October 9, 2019, the AHS EO attended at the Premises with members of the RISC team (City of Edmonton and EPS) to conduct the Inspection. The RISC team and the EO was granted entry by an individual named Wade (the "Tenant") inside the Premises and observed that someone was using the Premises as a living space. The EO discussed with the Appellant and his Agent that he was not permitted to allow tenants in the house or the Premises. She did not tell the Appellant at this time that she would be issuing an Order or show the Appellant the photographs she had taken.

[30] The Respondent submits that during the Inspection, she observed the following (see Photographs found in Tabs 3, 9 & 11 of Exhibit 1):

- (a) The presence of a mattress with bedding.
- (b) A TV mounted to the rafters over the bed.
- (c) Food.
- (d) A hot plate.
- (e) Personal belongings including a lamp and alarm clock.

[31] The Respondent argues that while it was possible that someone had just been there during the day, the evidence confirms that someone was living in the Premises.

[32] The Respondent states that the EO told the Tenant that he would have to vacate the Premises. The Tenant was not concerned, as he had alternate accommodations.

[33] An EO later re-inspected the Premises on November 6, 2019 (the "Re-inspection"). At the time of the Re-inspection, the EO noted that the living space had been disassembled. That

is, the Tenant had moved out all of his belongings. The EO also told the Appellant that the Order only applied to the Premises and not the house or the other garage on the Premises. The Respondent also submits that the Appellant was advised that the Order need only be complied with if he intended to rent the Premises as a housing unit.

[34] A Second Re-inspection on December 9, 2019, found the Premises to be boarded up and unoccupied.

[35] The Respondent submits that, at this time, the Appellant is in compliance with Order as the back Garage is boarded up. The Respondent also recognizes the Appellant's ongoing concerns about keeping homeless people out of the Premises and that RISC team do visit the Property on a monthly basis. The Appellant has recently given the EPS "Agent Status" which gives them the right to remove people from the premises without having to first receive a complaint from the Appellant.

[36] The Respondent submits that the Order will remain in place as they do not want the Premises to be occupied.

[37] In conclusion, the Respondent submits that the Panel should confirm the Order.

Analysis and Reasons

[38] It is unfortunate that the Order could not have been clear with respect to which "garage" the Premises referred to. In the end, however, it is of little consequence, as the parties were able to sort this out. The Panel would like to thank the Appellant for providing Exhibits 2 and 3, which were particularly helpful.

Whether the Premises is a housing premises pursuant to the Housing Regulations

[39] The Panel accepts the evidence of the EO that the Premises was in fact a housing premises pursuant to the Regulations. The Appellant knew or ought to have known that the fellow who used to reside in his house (until he was asked to leave pursuant to the Previous Order) had taken up residence in the Premises. Even if it were the case that the Appellant was completely unaware that someone had taken residence in the Premises, it does not change the fact that the Order correctly identifies the Premises as a housing premises and subject to the application of the MHHS.

Whether the EO made any errors of fact with respect to one or more of the violations listed in the Order

[40] Based on the evidence presented by the EO, the Panel cannot see any errors made with respect to the list of violations listed in the Order.

[41] During the hearing, it was evident that the Appellant had formed the belief that the Order included his house. For certainty and clarity, the Panel confirms that the Order only pertains to the Premises.

Findings and Conclusion

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

- (a) The Premises was a housing premises at the time of the Order as defined in the Regulations.
- (b) The EO has not made any errors of fact and correctly identified the violations under the MHHS as listed in the Order.

[43] The Panel appreciates the confusion created for the Appellant by the way the Order is written. However, the letter of December 12, 2019, to the Appellant by Alberta Health Services, has clarified the confusion and addressed the concerns the Appellant may have had.

[44] Based on the foregoing, the Order is hereby confirmed.

[45] The Order shall remain in force until such time as AHS rescinds the order 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 9, 2020