

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, NORTH ZONE dated JUNE 19, 2020**

BOARD: Ike Zacharopoulos, Board Alternate Vice Chair
Miles Weatherall, Board Vice Chair
Vicki Wearmouth, Board Member
David Rolfe, Board Member

BETWEEN:)	
)	
)	
STEPHEN H. COHEN	)	Stephen Cohen,
(Appellant)	)	for the Appellant
)	
- and -)	
)	
ALBERTA HEALTH SERVICES	)	Kyle Fowler,
	)	Counsel, Alberta Health Services,
(Respondent)	)	Jim Moore, Executive Officer,
	)	Alberta Health Services,
	)	for the Respondent
)	
)	
)	
	)	Tara Argent,
	)	McLennan Ross LLP,
	)	Independent Counsel for the Public Health
	)	Appeal Board
)	
	)	Heard: July 20, 2020

WRITTEN REASONS OF THE BOARD

A notice of appeal (the “Appeal”) was received the Secretariat of the Public Health Appeal Board (the “PHAB”) on June 24, 2020. This matter came before a panel of the Board (the “Board”) on July 20, 2020, in Edmonton, Alberta via video and telephone conferencing.

The Issue of Appeal

[1] The live issue before the Board was whether, in light of the COVID-19 pandemic (the “COVID”), the Order of the Executive Officer (the “Order”) should be varied so that the Premises is open for tenant accommodation purposes before all of the ordered work, specifically the bedroom windows, is completed to the satisfaction of an Executive Officer of Alberta Health Services.

Board’s Decision

[2] The Board rendered its decision not to vary the Order on August 11, 2020 (the “Decision”) following the hearing of the Appeal. The written reasons were to follow at a later date. The Board provides the written reasons as follows.

Background

[3] The subject-matter property is a rental housing property identified as Unit 4, 3523 15A Street SW, Calgary AB T2T 4C2 (the “Premises”).

[4] On June 15, 2020, the Premises was inspected (the “Inspection”) by Executive Officer Moore (the “EO”).

[5] Upon the conclusion of the Inspection and review with the EO’s Acting Coordinator, an Order was issued verbally and by the written Order on June 19, 2020. The full Order is included under Appendix A. The Order directed the following:

1. *That the occupants vacate the above noted premises on or before **July 1, 2020**.*
2. *That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:*
 - a. *Replace or modify the windows in the southeast and southwest corner bedrooms to meet emergency egress requirements.*
 - b. *Replace the kitchen window lock.*
 - c. *Install an operational smoke alarm in the unit.*
 - d. *Remove all of the water damaged subfloor from the hallway and kitchen and reconstruct the subfloor with new materials.*
 - e. *Remove and dispose of mouldy absorbent floor and wall materials in the hallway. Reconstruct the hallway wall and floor with new materials. For non-absorbent materials scrape and clean and disinfect surfaces.*
 - f. *Remove all water damaged bathroom ceiling materials above the shower. Reconstruct with new materials and apply a new finish that is smooth, impervious to moisture and easy to clean.*
 - g. *Install a bathroom ventilation fan with a vent to the exterior of the unit.*
 - h. *Install effective insect screens on all openable windows.*

- i. *Properly close the hole in the back wall of the kitchen cabinet underneath the sink and apply a finish that is smooth, impervious to moisture and easy to clean.*
 - j. *Install a new floor covering in the kitchen and hallway.*
 - k. *Install new baseboards in the kitchen and hallway.*
 - l. *Replace transition strips between hallway, kitchen, bathroom and bedroom flooring.*
 - m. *Seal the joint between the bathroom vanity countertop and the wall.*
 - n. *Refinish the walls and ceilings in the bathroom so they are smooth, imperious to moisture and easy to clean.*
 - o. *Reseal the joint between the bathroom floor and the bathtub.*
3. *That until such time as the work referred to above is completed to the satisfaction of an Executive Officer of Alberta Health Services; the above noted premises shall remain closed for tenant accommodation purposes.*

[6] A hearing was held on June 26, 2020, whereby the Board Chair (the “Chair”) heard the Respondent’s application to stay the Order. The Chair decided not to grant a Stay of the Order. The hearing of the Appeal was scheduled for July 20, 2020.

Jurisdiction

[7] The Parties had no objections to the Board as constituted, or with the Board’s jurisdiction to hear the Appeal.

[8] There was no issue raised regarding the timing of the Appeal.

Grounds of the Appeal

[9] The Appellant indicated it did not object to the ordered work

[10] The Appellant advanced the following grounds of the Appeal:

- (a) The Order does not consider the impact of COVID-19 pandemic (the “COVID”) on the ability to secure the necessary windows.
- (b) If the COVID situation delays the delivery of the required windows it would delay the completion of the ordered work.
- (c) If windows are held up due to COVID, it would interfere with the Owner’s ability to complete the ordered work on a timely basis, the ordered closure of the Premises to tenant accommodation purposes was “unfair, unique and prejudicial”.
- (d) The order to close went too far as the timely replacement of the windows was beyond the Owner’s control due to COVID.

Legal Issues

[11] Based on the aforementioned grounds, the legal issue for consideration by the Board was as follows:

- (a) Did the windows in the Premises' southeast and southwest corner bedrooms comply with the *Minimum Housing and Health Standards* (the "MHHS") with respect to emergency egress?

Documents/Exhibits

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

- (a) Exhibit 1 – The Order dated June 19, 2020;
- (b) Exhibit 2 – The Appeal dated June 23, 2020;
- (c) Exhibit 3 – The Respondent's 41 page Disclosure of July 15, 2020;
- (d) Exhibit 4 – The Respondent's 91 page Written Submissions of July 16, 2020;
- (e) Exhibit 5 – The Respondent's Facility Notes and photographs of July 20, 2020.

Submissions of the Appellant

[13] The Appellant noted the late arrival of the Respondent's Exhibit 5 and suggested it was unfair for this Exhibit to be submitted so late. It was confirmed through questioning that the photos included in said exhibit were taken by the Appellant's contractor and forwarded by the Appellant to the EO.

[14] The Appellant indicated that the damage at the Premises was caused by the tenants, including the removal of smoke alarms and the water damage to the Premises.

[15] The Appellant accepted the work ordered by the EO was warranted and indicated that some work had in fact started. While it questioned the extent of mould in the Premises it also indicated the relevant repairs had been completed. It questioned the need for window screens if the window work extended into the fall.

[16] The Appellant wondered how the Premises, reportedly approximately 60 years old, was apparently deemed safe with appropriate egress until the Inspection and Order.

[17] The Appellant clarified that the windows had been ordered but delivery could not be guaranteed by the manufacturer due to COVID. It was estimated window delivery may be

another two to four weeks from the date of the hearing.

[18] It was unfair to expect the Owner to complete the ordered window work without consideration of the impact COVID had on the availability of the required materials.

[19] The Appellant argued it was prejudicial to the Owner to have the Premises remain closed for tenant accommodation purposes until all ordered work was “completed to the satisfaction of an Executive Officer of Alberta Health Services”.

[20] The Appellant advocated that the Premises be open for tenant accommodation purposes once all ordered work, except the windows, was completed. The Applicant was committed to installing the windows once received.

Submissions of the Respondent

[21] The Inspection arose from a complaint filed regarding the Premises. It was the Owner’s responsibility to meet the requirements set out in the Act and pursuant Regulations and Standards.

[22] The EO reviewed and confirmed the Inspection and findings leading to the Order.

[23] The Respondent indicated the age of premises was not a consideration when inspections were undertaken under the Public Health Act and pursuant Regulations and Standards.

[24] The lack of egress through the southeast and southwest corner bedroom windows and the lack of a fire alarm were confirmed by the EO as critical violations, creating an unsafe condition for tenants. The lack of egress would by itself support a closure other. Further to discussions with a supervisor, the EO decided to issue a closure order.

[25] It was not unusual to issue a closure order where premises were deemed to present unsafe conditions for tenants.

[26] The photographs included within Exhibit 5 were provided by the Appellant’s contractor. Further, the Facility Notes were summaries of discussions with the Appellant and therefore not new evidence.

[27] A delay in the delivery of the ordered windows was a hypothetical situation apparently presented by the Appellant’s contractor and did not diminish the Owner’s responsibilities under the Act and pursuant Regulations and Standards.

Board’s Analysis and Reasons

[28] The Board reviewed the cumulative evidence and arguments submitted by the Parties but in the interest of brevity will confine its comments to what was found to be relevant to the issue at hand.

[29] The introduction to the MHHS includes the following:

“The primary objective of this *Minimum Housing and Health Standard* is to protect and promote the health and well being of occupants of rental housing premises and of those who may reside in the immediate vicinity of such premises...”

[30] Further to s. III of the MHHS, “*The Owner shall ensure that the housing premises is ... in a safe condition ...*”.

[31] According to Part III, s. 3(b), of the MHHS, an owner of residential rental premises must provide adequate emergency egress in each bedroom. The section reads as follows:

3. *Safe and Secure*

(a) ...

(b) ***Emergency Egress***

- (i) *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.*
- (ii) *Windows referred to in section 3(b)(i) shall provide unobstructed openings with areas not less than 0.35 m² (3.8ft²), with no dimension less than 380 mm (15”).*
- (iii) *If the window referred in section 3(b)(i) is provided with security bars, the security bars shall be installed so they may be opened from the inside without the use of any tools or special knowledge.*
- (iv) *Notwithstanding section 3(b)(i), (ii) and (iii), alternate provisions for emergency egress may be approved by an executive officer where, after consultation with a safety codes officer, the executive officer is satisfied that the alternate provisions provide for means of emergency egress.*

[32] It was unrefuted that the windows in the southwest corner bedroom were only able to open 4 inches. Further, that the openable window in the southeast corner bedroom only opens 6 inches.

[33] The Board therefore found the bedroom windows did not provide “...unobstructed openings with areas not less than 0.35 m² (3.8ft²), with no dimension less than 380 mm (15”).

[34] There was no discussion before the Board of alternate provisions for emergency egress.

[35] The Board therefore found the weight of evidence to support that the bedroom windows did not comply with s. 3(b) of the MHHS with regard to emergency egress.

[36] The Board interpreted the objective of s. 3(b) of the MHHS to protect the health and well being of tenants of the Premises. The Board understood the weight of evidence to support that occupancy of the Premises prior to the completion of the ordered work would be contrary to the objectives of the MHHS. There was no basis understood by the Board for a variance from that objective due to potential COVID related delays in the delivery and installation of the windows

deemed necessary to have the Premises be compliant under s. 3(b) of the MHHS.

[37] The Board was mindful of the Appellant's comments regarding Exhibit 5. It was unrefuted that the information included within Exhibit 5 was related to conversations between the Appellant and the Respondent. The Board was not persuaded this was new evidence or somehow prejudicial to the Appellant. Further, the photographs under Exhibit 5 were confirmed to have been taken by the Appellant's contractor and then forwarded by the Appellant to the Respondent. The Board was not persuaded this constituted new evidence. The Board was therefore not swayed by the Appellant's objections to Exhibit 5.

[38] The Board also noted the Appellant's questioning of the ordered window screens, although this was not brought forward by the Appellant as an issue of appeal.

[39] Nonetheless, The Board noted S. 2(b)(iii) of the MHHS states as follows:

"During the portion of the year when there is need for protection against flies and other flying insects, every window or other device intended for ventilation shall be supplied with effective screens"

[40] It was understood by the Board that the timeframe of the ordered work was summer time, the portion of the year when protection against flies and other flying insects was needed. The Board therefore found s. 2(h) of the Order to be reasonable.

Findings and Conclusion

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

- (f) The windows in the Premises' southeast and southwest corner bedrooms did not comply with the MHHS with respect to emergency egress.

[42] The Order is therefore not varied.

[43] The Board thanks both Parties for the respectful manner in which they participated in the virtual hearing.

Original Signed
Ike Zacharopoulos, Alternate Vice-Chair
On behalf of Board

Date: December 21, 2020