

**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  
STEPHEN H. COHEN OF THE ORDER OF AN EXECUTIVE  
OFFICER ISSUED BY ALBERTA HEALTH SERVICES, DATED  
JUNE 19, 2020**

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

**DECISION OF THE CHAIR**

**Hearing Date**

The Stay hearing was held by teleconference on June 26, 2020.

**Appearances**

For the Appellant:

Stephen Cohen, Agent of the Owner

For the Respondent:

Kyle Fowler, Counsel for Alberta Health Services (“AHS”)

**Decision of the Board**

[1] The Chair did not grant a stay of the Order.

**Background**

[2] Upon inspection of a housing premises located at 3523 15A Street SW – Unit 4, Calgary, Alberta (the “Premises”), AHS Officer Moore (the “EO”) issued an order (the “Order”).

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.

[3] On June 24, 2020, the Secretariat of the Public Health Appeal Board (the “Board”) received the Notice of Appeal (the “Appeal”).

[4] The Appellant is requesting a stay of the Order pending the hearing of the Appeal.

[5] The stay application was heard on June 26, 2020, by telephone conference.

[6] The stay application was heard by the Alternate Vice-Chair (acting as the Chair) of the Board further to s 3(5) of the *Public Health Act* (the “Act”) and s 3.5.3 of the Board’s Rules of Procedure

[7] The Chair’s summary decision was sent to the parties on July 3, 2020.

## **Issue**

[8] Should a stay of the Order be granted?

## **The Law**

[9] A stay may be granted pursuant to s. 6 of the Act, which 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.”*

[10] 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-MacDonald Inc. v. Canada (AG)*, [1995] 3 S.C.R. 199. 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;
- iii. There must be an analysis of the balance of inconvenience, which includes taking into account the public interest.

## **Submission of the Appellant:**

[11] The Appellant indicated that the Premises had been damaged by the tenants.

[12] The Premises was vacant as the tenants had been evicted due to nonpayment of rent.

[13] The Appellant clarified it did not object to the ordered repairs and indicated that some of the work had in fact started. It provided a summary of the work schedule. It was anticipated that the work (with the exception of the window work) would be completed “within two weeks”.

[14] The required windows had reportedly been ordered by the Appellant’s contractor but were not expected for “roughly 5 or 6 weeks” due to the impact of the COVID-19 pandemic (“COVID”) on the manufacture and/or delivery of the windows.

[15] It was unfair to expect the Owner to complete the ordered window work without consideration of the impact COVID-19 had on the availability of the required materials.

[16] 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”. The inability to rent the Premises was causing irreparable harm to the Owner.

[17] The Appellant advocated that the Premises be open for tenant accommodation purposes once all ordered work, except the windows, was completed.

**Submissions of the Respondent:**

[18] The Respondent argued that no serious issue was to be tried since the Appellant did not object to the ordered work.

[19] The merit hearing would likely be held within the timetable suggested by the Appellant for the ordered work. Further, the Premises was vacant. Thus, there was no irreparable harm to the Owner.

[20] The condition of the windows and the lack of smoke detectors presented a significant public health hazard.

[21] In that the Premises was vacant, no tenants were being inconvenienced by the Order.

[22] In light of the above, it was in the public interest not to grant a stay of the Order.

**Analysis/Reasons:**

[23] The Appellant clarified it had “no objection to the 16 points which require attention”, confirmed as the work directed by the Order. Rather, the Appellant requested that the Premises be available for tenant accommodation purposes when the ordered work, except for the windows, was completed. Thus, the Appellant was seeking a stay of item 3 as found on page 4 of the Order.

[24] The Appellant clarified it was prepared to address its opposition to (portions of) the Order at a merit hearing. The Chair noted the Appellant’s arguments regarding the ordered window work and the closure of the Premises for tenant accommodation purposes.

[25] The Chair found the Appeal presented serious issues to be determined.

[26] The Appellant submitted that the completion of the ordered window work would be delayed due to COVID impacts on the manufacture and supply of windows. It argued that this delay, combined with the closure of the premises for tenant accommodation purposes, would result in a loss of rental revenue.

[27] The Chair acknowledged the Appellant's reported difficulties securing materials on a timely basis for the ordered window work. It was understood that any such delay was COVID related, industry wide and not specific to this work program. Further, the Chair was mindful that the Appellant had committed to undertake all work as directed and had in fact ordered the windows. It was stated that the ordered work (including the windows) would be completed within six weeks. It was confirmed by the Appellant that the Premises was vacant.

[28] In light of the above, the Chair found the Appellant did not demonstrate irreparable harm if the stay was not granted.

[29] It was deemed reasonable by the Chair that COVID factors may create inconveniences to the community at large and to work programs, including that ordered at the Premises. This was not understood by the Chair to be unfair or prejudicial to the Owner. In that the Appellant had agreed to the directed work and had in fact ordered the windows, the Chair understood any inconvenience related to potential delays in renting the Premises to be largely undefined.

[30] The Chair was also mindful of the public interest. The Chair understood the reported contraventions of s III(3)(b)(i) and (ii) of the Minimum Housing and Health Standards (the "MHHS") to be unrefuted. The Chair was not swayed by the Appellant's argument, largely based on the historical use of the Premises for tenant accommodation purposes, that the existing windows did not present a danger to the public. Rather, the Chair was mindful of the MHHS requirements for unobstructed window openings and understood the existing windows to not meet these requirements, thus presenting a defined risk to the health and well-being of potential occupants of the Premises. Lastly, there was no public inconvenience as the Premises was vacant.

[31] Further to the above discussion, the Chair found the balance of inconvenience (including the public interest) not to support a stay of the Order.

[32] In summary, upon review of the tests noted under paragraph [10] above, the Chair's findings did not support a stay of the Order.

**Conclusion:**

[33] In keeping with the above reasons, the Chair did not grant a stay of the Order.

[34] It follows that the Order shall remain in force.

Original Signed

Ike E. Zacharopoulos, Alternate Vice-Chair  
Public Health Appeal Board