

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 3, DATED SEPTEMBER 24, 2020**

PANEL: Kevin Kelly, Chair
Miles Weatherall, Member
Vicki Wearmouth, Member
David Rolfe, Member

BETWEEN:)	
)	
)	
ALFRED DALLYN	)	Alfred Dallyn,
	)	Self-represented,
(Appellant)	)	Appellant
)	
- and -)	
)	
ALBERTA HEALTH SERVICES	)	Ashley McClelland,
	)	Alberta Health Services,
(Respondent)	)	for the Respondent
)	
)	
	)	Stuart Chambers,
	)	McLennan Ross LLP,
	)	Independent Counsel for the Board
)	
)	
	)	Heard: October 22, 2020

WRITTEN REASONS OF THE BOARD

A notice of appeal was received on October 7, 2020. This matter came before a panel of the Public Health Appeal Board (the “Board”) on October 22, 2020, via video and telephone conference.

The Appeal

[1] This is an appeal (the “Appeal”) to reverse an order of an Executive Officer (“EO”) dated September 24, 2020 (the “Order”).

Board Decision

[2] The Board rendered its decision to confirm the Order on October 22, 2020 following the Board’s review of oral submissions of the Appellant and the Respondent on October 22, 2020.

Background

[3] The subject property is a house located at 730 – 7 Avenue, Wainwright, Alberta (the “Premises”).

[4] AHS Executive Officer Hameister (the “EO”) inspected the Premises on September 24, 2020 and noted the following conditions in and about the 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:

- a. the house and property have grossly unsanitary conditions, including an accumulation of garbage, filth, and human excrement;
- b. the Premises lacks any functional smoke alarms, and the accumulation of household items and garbage creates a fire hazard;
- c. the Premises is not supplied with running water for consumption or sanitary purposes;
- d. the sewer system is backed up and the toilet is not functional, resulting in the occupants defecating outside in the yard.

[5] The EO’s inspection disclosed the following breaches of the *Public Health Act*, RSA 2000, c P-37 and the *Housing Regulation*, Alta Reg 173/1999 and the *Minimum Housing and Health Standards* in and about the Premises:

- a. The property is in an unsanitary condition including an accumulation of garbage, filth, and human excrement contrary to section 16 of the *Minimum Housing and Health Standards*.
- b. Functional smoke alarms are not present in the house, contrary to section 12(a) of the *Minimum Housing and Health Standards*.
- c. The Premises is not supplied with running water, contrary to section 3(1)(b)(iii) of the *Housing Regulation*.

- d. The sewer system is backed up and the toilet is not functional, contrary to section 6(c) of the *Minimum Housing and Health Standards*.
- e. The house is poorly maintained and the floor, wall and ceiling surfaces are in disrepair, contrary to section 3 of the *Housing Regulation*.

[6] After inspecting the Premises and setting out the above breaches of the Act and Regulations, the EO declared the Premises unfit for human habitation.

[7] The Order was issued pursuant to the *Public Health Act* (the “Act”), the *Housing Regulation*, Alta Reg 173/1999 and the *Minimum Housing and Health Standards*, and listed the above contraventions of the Act and Regulations as they pertained to the condition of the Premises. The EO ordered and directed that:

1. the occupants vacate the Premises on or before October 8, 2020.
2. the owner, Robert DeWinter must complete the following work in and about the Premises:
 - a. ensure the house and property are maintained in a clean and sanitary condition.
 - b. install functional smoke alarms in the common area near the bedrooms.
 - c. supply the house with hot and cold running water that is safe for human consumption, and provide recent satisfactory bacteriological and chemical lab results to demonstrate this.
 - d. repair the sewer system so that it functions properly, and provide a report from a qualified private septic installer to demonstrate this.
 - e. repair or replace damaged floor, wall, and ceiling surfaces.
3. The Premises shall remain vacant and secure from unauthorized entry until the work referred to above is completed to the satisfaction of an EO of Alberta Health Services (“AHS”).

[8] After the Order was issued, the Town of Wainwright Bylaws Department boarded up the Premises to prevent unauthorized access to it.

[9] The Board issued a preliminary decision on October 22, 2020 confirming the Order, with written reasons to follow.

Timing of Appeal

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

[11] The Public Health Appeal Board Secretariat received a Notice of Appeal dated October 7, 2020 (the “Notice of Appeal”) on October 7, 2020. The Notice of Appeal was therefore not filed on time. Section 5(3) of the Act gives the Public Health Appeal Board discretion to extend the 10 day period if it finds it appropriate to do so as set out in section 5(9) of the Act.

[12] When determining if an extension is appropriate, the Board may consider such criteria as:

- (a) whether the Appellant had a bona fide intention to appeal before the expiration date of the appeal period;
- (b) whether the Appellant, either expressly or impliedly, informed the respondent of his or her intention to appeal;
- (c) whether the respondent would be unduly prejudiced by an extension of time;
- (d) whether there is merit in the appeal in the sense that there is a reasonably arguable ground;
- (e) whether the Appellant has a valid explanation for the late filing of his or her appeal; and
- (f) whether it is in the interests of justice that the extension be granted.

[13] The Appellant makes no mention why the Notice of Appeal was provided to the Board outside of the 10 day limitation period. He indicates in the Notice of Appeal that he is broke and picks bottles to survive. Communications between the Public Health Appeal Board Secretariat and the Appellant suggested that the Appellant might have limited access to Wi-Fi and a fax machine. The Board determined that the Appellant might not have possessed the means to fax the Notice of Appeal within the 10 day period.

[14] After considering the Appellant’s submissions, including his apparent limited access to Wi-Fi and a fax machine, the Board:

- a. decided it would be in the interests of justice that the extension be granted; and
- b. exercised its discretion under section 5(9) of the Act and extended the 10 day period to file the Notice of Appeal.

Grounds of the Appeal

[15] In his Notice of Appeal, the Appellant submits the following grounds for appeal:

- (a) the Premises require repairs; and
- (b) the Appellant requests more time to relocate.

Legal Issues

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

- (a) Issue 1: Should the Order be confirmed, reversed or varied?

Jurisdiction

[17] There are no objections to the Board's jurisdiction to hear the Appeal.

Documents/Exhibits

[18] 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 September 24, 2020;
- b. **Exhibit 2** – the Notice of Appeal dated October 7, 2020.

Submissions of the Appellant

[19] In the Notice of Appeal, the Appellant raised several issues regarding his landlord and his roommate. The Board does not have jurisdiction to hear landlord and tenant disputes and accordingly it will not address these issues in this decision.

[20] The Appellant submitted in the Notice of Appeal that he would haul water to the Premises to cook, clean and do dishes. He does not appear to object to the EO's findings in the Order regarding the condition of the Premises and breaches of the Act and Regulations. He appears to acknowledge that the Premises requires some repairs. He does not know where the owner of the Premises is and he has not had any contact with the owner for over a year. When he moved into the Premises approximately three years ago, it had running water. Now there is no running water or electricity. There is no way anyone could live there in its current condition. He does not intend to move back into the Premises, and he only seeks to gain access to the Premises to remove his personal property contained within those Premises.

Submissions of the Respondent

[21] AHS submitted that the Appellant raises no challenge to the Order, and the Appellant confirmed he has no concerns with the Order. AHS wants the Order to remain in effect. AHS has a limited ability to assist the Appellant to have reasonable time to remove his personal property from the Premises.

Analysis and Reasons

[22] The Board reviewed all evidence and arguments submitted by AHS and the Appellant and thanks the Parties for the respectful manner in which they participated in the virtual hearing.

Should the Order should be confirmed, reversed or varied?

[23] The purpose of the *Minimum Housing and Health Standard* is as follows:

“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.”

[24] The Order identifies several breaches of the *Public Health Act*, the *Housing Regulation*, and the *Minimum Housing and Health Standards*. The Board will now address these breaches.

[25] *The property is in an unsanitary condition including an accumulation of garbage, filth, and human excrement contrary to section 16 of the Minimum Housing and Health Standards.*

Section 16 of the *Minimum Housing and Health Standards* states that “the owner shall ensure that all rooms and other areas used in common by the occupants of the individual dwellings are maintained in a clean and sanitary condition.” The EO found the Premises to be in an unsanitary condition, as demonstrated by an accumulation of garbage, filth, and human excrement. The sewer system is backed up and the toilet is not functional, resulting in the occupants defecating in the yard. The Appellant did not dispute this. The Board is satisfied from the evidence presented that the Premises was not maintained in a clean and sanitary condition, contrary to section 16 of the *Minimum Housing and Health Standards*.

[26] *Functional smoke alarms are not present in the house, contrary to section 12(a) of the Minimum Housing and Health Standards.*

Section 12(a) of the *Minimum Housing and Health Standards* provides that “smoke alarms shall be operational and in good repair at all times.”

[27] The EO did not find any functional smoke alarms in the house. The Appellant did not provide any evidence to dispute this. The Board is satisfied from the evidence presented that the Premises lacks any functional smoke alarms, and the accumulation of household items and garbage creates a fire hazard, contrary to section 12(a) of the *Minimum Housing and Health Standards*.

[28] *The premises is not supplied with running water, contrary to section 3(1)(b)(iii) of the Housing Regulation.*

Section 3(1)(b)(iii) of the *Housing Regulation* states that

3(1) Subject to subsection (3) and section 4, an owner shall ensure that

*(b) the occupants of the housing premises are supplied with adequate
(iii) running hot and cold water that is safe for human consumption.*

[29] The EO found the Premises was not supplied with running water for consumption or sanitary purposes. The Appellant did not provide any evidence to dispute this, and he submitted that he would haul water to the Premises to cook, clean and do dishes. He also submitted that the Premises had running water when he first moved into the Premises, and now there is no running

water. The Board is satisfied from the evidence presented that the premises is not supplied with running water, contrary to section 3(1)(b)(iii) of the *Housing Regulation*.

[30] *The sewer system is backed up and the toilet is not functional, contrary to section 6(c) of the Minimum Housing and Health Standards.*

Section 6(c) of the *Minimum Housing and Health Standards* provides that “all plumbing fixtures shall be serviceable, free from leaks, trapped and vented to the outside.” The EO’s inspection disclosed what he described as grossly unsanitary conditions, including an accumulation of human excrement. The backed up sewer system and non-functional toilet resulted in the occupants defecating outside of the house and in the yard. The Appellant did not dispute the EO’s assessment of the sewer system and toilet and accumulation of human excrement.

[31] *The house is poorly maintained with the floor, wall and ceiling surfaces in disrepair, contrary to section 3 of the Housing Regulation.*

Section 3(1)(iii) of the *Housing Regulation* provides that “subject to subsection (3) and section 4, an owner shall ensure that (a) the housing premises are (iii) in good repair.” The photographs provided by AHS of the inside of the Premises clearly shows the Premises are in a state of disrepair and is poorly maintained. The Appellant did not provide any evidence to dispute that the house is poorly maintained and in a state of disrepair. The Board is satisfied from the evidence that the Premises are in a state of disrepair and are poorly maintained contrary to section 3 of the *Housing Regulation*.

[32] The Board notes from the Notice of Appeal and the Appellant’s submissions that the Appellant does not object to the Order itself, and his main concern is to be able to access the Premises to remove his personal property from within. He appears to acknowledge that the Premises requires some repairs, and he submitted that no one could live in the Premises in its current condition. His submissions support the EO’s findings and resulting directions made by the EO in the Order.

Findings and Conclusion

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

- (a) the Premises is in an unsanitary condition including an accumulation of garbage, filth, and human excrement contrary to section 16 of the *Minimum Housing and Health Standards*.
- (b) the Premises lacks any functional smoke alarms, and the accumulation of household items and garbage creates a fire hazard, contrary to section 12(a) of the *Minimum Housing and Health Standards*.
- (c) the Premises is not supplied with running water, contrary to section 3(1)(b)(iii) of the *Housing Regulation*.

- (d) the sewer system inside the Premises is backed up and the toilet is not functional, contrary to section 6(c) of the *Minimum Housing and Health Standards*.
- (e) the Premises is poorly maintained and the floor, wall and ceiling surfaces are in disrepair, contrary to section 3 of the *Housing Regulation*.

[34] Based on the aforementioned findings, the Board confirms the Order as follows:

- (a) the occupants must vacate the Premises on or before October 8, 2020.
- (b) the owner, Robert DeWinter must complete the following work in and about the Premises:
 - i. ensure the house and property are maintained in a clean and sanitary condition.
 - ii. install functional smoke alarms in the common area near the bedrooms.
 - iii. supply the house with hot and cold running water that is safe for human consumption, and provide recent satisfactory bacteriological and chemical lab results to demonstrate this.
 - iv. repair the sewer system so that it functions properly, and provide a report from a qualified private septic installer to demonstrate this.
 - v. repair or replace damaged floor, wall, and ceiling surfaces.
- (c) the Premises shall remain vacant and secure from unauthorized entry until the work referred to above is completed to the satisfaction of an EO of AHS.

[35] The amended Order shall remain in force until such time as AHS rescinds the order in accordance with the *Public Health Act*.

[36] The Board also recommends that AHS assist the Appellant in communicating with the Town of Wainwright for the sole purpose of gaining access to the Premises and removing his personal property from the Premises.

Original Signed

Kevin Kelly, Chair
On behalf of the Hearing Panel of the
Public Health Appeal Board

Date: December 23, 2020

Appeal 11-2020