

**PUBLIC HEALTH APPEAL BOARD**

**IN THE MATTER OF THE PUBLIC HEALTH ACT,  
CHAPTER P-37, R.S.A. 2000  
AND ITS REGULATIONS**

**IN THE MATTER OF THE STAY APPLICATION TO  
THE CHAIR OF THE PUBLIC HEALTH APPEAL BOARD  
BY GILLES CARON  
OF THE ORDER OF AN EXECUTIVE OFFICER  
ISSUED BY ALBERTA HEALTH SERVICES  
ZONE 4 EDMONTON  
DATED DECEMBER 6, 2017**

**STAY HEARING HELD FEBRUARY 16, 2018**

**Appearances**

Gilles Caron, Owner/Appellant (via Claire Laskin, Interpreter)

Linda SVOB, Legal Counsel, Alberta Health Services (Respondent)

**Decision**

The Acting Vice-Chair has decided not to grant a stay of the Order of an Executive Officer dated December 6, 2017 (the Order).

**Introduction**

The Order was issued pursuant to the *Public Health Act* (the Act), the Housing Regulation and the Minimum Housing and Health Standards regarding a property located at 12022 – 40 Street Edmonton, Alberta (the Property). The Order set out the contraventions of the Act and Regulations as they pertained to the condition of the Property, and required the owner (the Appellant) to complete some remedial work on the Property:

1. *That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:*
  - a. *Install an operational smoke alarm near the bedrooms. Ensure smoke alarms are in good repair and operational at all times.*
  - b. *Provide receipts identifying professional carpet cleaning of the basement carpets.*
  - c. *Repair or cap the electrical wires in the southeast main floor bedroom.*
  - d. *Provide adequate weatherproofing around the front door.*
  - e. *Ensure all walls, windows, ceilings, floors and floor coverings are maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean. This includes:*
    - i. *Repair the holes in the wall and ceiling of the basement bathroom.*

- ii. *Repair the tread nosing and secure the flooring on the first step to the basement.*
  - iii. *Replace the baseboard under the window in the north east basement bedroom.*
  - iv. *Install carpet in the north east basement bedroom closet.*
  - f. *Properly install the insect screen in the kitchen window.*
  - g. *Provide receipt indicating proof of purchase for windows. Ensure each bedroom has at least one outside window which may be opened from the inside without the use of tools or special knowledge and provides unobstructed openings with areas not less than (sic) 0.35m<sup>2</sup> (3.8ft<sup>2</sup>), with no dimension less than 380 mm (15 inches) Windows must also be able to stay up when opened.*
2. *The work referred to in para. 1, item (a) shall be completed within 48 hours.*
  3. *The work referred to in para. 1, item (b through g), shall be completed by December 31, 2017.*

*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.”*

In a Notice of Appeal received by the Public Health Appeal Board (the Board) on December 22, 2017, the Appellant indicated he wished to appeal the Order, based on two grounds:

1. Whether the Order of the Executive Officer (E.O.) dated December 6, 2017, unjustifiably infringed the Appellant’s right to an expectation of privacy guaranteed by section 8 of the Canadian Charter of Rights and Freedoms.
2. Whether the Order ought to be varied or reversed as the Appellant alleges the Order was made outside the authority of the E.O. The Appellant further maintains the E.O. displayed a sense of hatred or racism, was zealous and nit-picking, and the E.O. breached the Appellant’s privacy or expectation of privacy by overstepping the boundaries of her legislative authority.

On the same date, December 22, 2017, the Board received a request from the Appellant that the Order be stayed.

On January 16, 2018, the Board met by teleconference to discuss the matter of jurisdiction concerning the Appellant’s appeal. The Board concluded that it did not have jurisdiction to hear the first ground of appeal. The *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000 c. A-3, and the *Designation of Constitutional Decision Maker’s Regulation*, Alta. Reg. 69/2006, have the effect of precluding the Board from hearing matters that determine a question of constitutional law. The Board concluded it would not consider any Charter violation issues raised by the Appellant. The Board found it did have jurisdiction to hear the second ground of appeal. The Appellant was advised of this via email on January 29, 2018.

After some emails back and forth regarding availability of all parties, the Appellant was informed on February 7, 2018, that the stay hearing would be heard on February 16, 2018. The Board’s Secretariat suggested several dates for the appeal hearing and the Appellant confirmed, on February 10, 2018, that he would be available for the appeal hearing on February 26, 2018.

## **Issue**

Whether a stay of the Order of the Executive Officer dated December 6, 2017, ought to be granted.

## **The Law**

The Chair of the Board is empowered to grant a stay pursuant to section 6 of the Act, which states:

6. *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.*

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.

The Board considered these three factors in the context of a stay hearing that occurred 10 days prior to the date of the appeal hearing.

## **Submissions of the Appellant:**

The Appellant states the E.O.'s actions culminating in the Order constituted a serious breach of her authority: her actions were not legal, she was harassing him, and she lied to the tenant. The Appellant was extremely upset by the E.O.'s actions and feels the E.O. is in a position of power over him. This scares him.

The Appellant confirmed that he has already satisfied some of the areas of the Order, for instance he has installed smoke detectors. He has also gone shopping for windows, but it was impossible to get contractors to attend the residence, especially in view of the holiday season. The Appellant feels the E.O. has erred in requiring an egress window in one of the bedrooms as the stairs should suffice as egress. In any case, he could not get anyone to install a window during the short time frame allowed. While he does not appear to have a problem with replacing many of the windows outlined in the Order, the Appellant cites there would be a financial burden on him, he estimates between \$2500 and \$3500, if he were to change the one window in question.

The Appellant states he would suffer irreparable emotional harm, as well as being inconvenienced, if the E.O. makes good on what he perceives as her threat/intention to return to the property to see if there are other contraventions. The Appellant confirmed that what he perceives as a threat is noted in the Order: *"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". He sees this as an abuse of power.*

### **Submissions of the Respondent:**

The Respondent suggested that the Appellant's claim to a serious issue is frivolous as Alberta Health Services had the right to inspect the Property, particularly as it is a rental property. The Respondent acknowledged this part of the test has a low threshold and can be met if the appeal is not frivolous or vexatious.

The Respondent suggests that there is no irreparable harm to be caused as the appeal hearing is only some 10 days away. Since the date of the Order, inspections have been attempted, all with access denied. Further, the tenant is still in the premises.

With regard to the balance of inconvenience, the Respondent concludes the public, in particular the tenant, would be inconvenienced if there is an emergency, for instance a fire, without the proper installation of emergency egress windows.

### **Application of the Test**

- i. Is there a serious issue to be determined?

This part of the test has a low threshold and can be met if the appeal is not frivolous or vexatious. The Appellant cites that his dealings with the E.O. have led to him feeling harassed and "browbeaten" by A.H.S. His Notice of Appeal deals mainly with these areas. Many of the Appellant's submissions were with respect to the accuracy, jurisdiction, validity and fairness of the Order, which ought to be presented at the appeal hearing where the Board may confirm, vary or reverse the Order. The serious issue he alleges is whether the E.O. acted outside of her authority during the inspection and the issuance of the Order. The Appellant's fear is that the E.O. will return and, in his words "harass" him, thereby affecting his health and emotional stability. The Appellant's submissions, while speculative, are in the Board's view sufficient to meet the very low threshold imposed for this part of the test.

- ii. The second part of the test is whether the Appellant would suffer irreparable harm if the stay was not granted.

The Appellant suggests an issue that might constitute irreparable harm would be the financial burden of installing a particular window, the Appellant quotes \$2500 to \$3500, if in fact the Order is varied or reversed. Financial loss can, in appropriate circumstances, constitute irreparable harm. The period for calculating the financial burden is from when the stay application is heard until the Board hears and decides the appeal. The Board is analyzing this second part of the test less than two weeks before the hearing. Since the window has not been installed in the time period between the Order and the Stay hearing, it is unlikely to be installed in the much shorter time period between the stay hearing and the Appeal hearing. The Board concludes this speculated financial loss is not sufficient to meet the test for irreparable harm to the Appellant.

The Appellant also suggests he will suffer irreparable emotional harm by a re-inspection of the property if a stay is not granted. The Board is not certain that the emotional distress

cited by the Appellant denotes irreparable harm. However, for purposes of this stay application, the Board does not need to decide that question as the Appellant's suggestion is purely speculative - since the date of the Order, the Property has not been re-inspected. A.H.S. has not been able to enter the house through regular means. Certainly they could apply for a court order:

*1(1) of the Act, "Where the owner of a public place or private place refuses to allow an executive officer to exercise the executive officer's powers under section 59 or 60 or hinders or interferes with the executive officer in the exercise of those powers, the executive officer may apply to a judge of the Court of Queen's Bench for an order directing the owner to do or refrain from doing anything the judge considers necessary in order to enable the executive officer to exercise the executive officer's powers, and the judge may make the order accordingly."*

As AHS has not done so since the issuance of the Order, it is unlikely they will do so in the next ten days, particularly considering the imminent Appeal hearing. More importantly, a stay would not preclude another inspection in any event.

The Appellant did not convince the Board that he will suffer irreparable harm from the date of the stay hearing until the appeal hearing on February 26, 2018 if a stay is not granted.

- iii. The third part of the test requires an assessment of inconvenience to the Appellant if the stay is not granted and the inconvenience to the Respondent if the stay is granted. This analysis is not required as the Appellant has not shown that he would suffer irreparable harm if the stay was not granted. However, the Board does find that no party will be inconvenienced more than they have already been since the appeal hearing is only days away.

Again, many of the Appellant's submissions were with respect to the accuracy, jurisdiction, validity and fairness of the Order, which will be presented and dealt with at the appeal hearing where the Board may confirm, vary or reverse the Order.

**For the above reasons, the Acting Vice-Chair of the Public Health Appeal Board has decided not to grant a stay of the Order dated December 6, 2017.**

Per:



Linda Klein, Acting Vice-Chair

Date: February 20, 2018