

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, EDMONTON ZONE, DATED JUNE 19, 2025**

PANEL: Kevin Kelly, Chair
Dr. Theresa A. Chika-James, Member
David Rolfe, Member
Vicki Wearmouth, Member

BETWEEN:)	
)	
)	
Mr. Russell Grant)	Self-represented
(Appellant))	
)	
)	
- and -)	
)	
)	
Alberta Health Services)	Megan Tupper,
)	Alberta Health Services,
(Respondent))	Legal Counsel for the Respondent
)	
)	

Heard via Video/Teleconference:
July 31, 2025

DECISION AND REASONS FOR DECISION

Introduction

[1] An initial notice of appeal, including preliminary applications to accept a notice of appeal filed out of time and to grant a stay of order to allow more time to find alternate accommodations,

was served on the Public Health Appeal Board (“**Board**” or “**PHAB**”) by the **Appellant**, Mr. Russell Grant, on July 2, 2025. A follow-up notice of appeal served on the PHAB on July 3, 2025, requested a stay of order for the purposes of appealing the order.

[2] The appeal (“**Appeal**”) was with respect to an Order - Unfit for Human Habitation: Order to Vacate (“**Order**”) - issued by an Alberta Health Services (“**AHS**”) Executive Officer (“**EO**”) concerning the housing premises located in St. Albert, Alberta and municipally described as: 181 Grandin Village, T8N 2J3 (the “**Premises**”).

Decision of the Chair regarding Preliminary Applications

[3] As permitted by the PHAB Rules of Procedure section 3.4.4 and 3.4.5, the PHAB Chair conducted a review of the Appellant’s preliminary applications: 1. late filing of a notice of appeal (3.4.1.c.); and 2. stay of order pending hearing (3.4.1.a.).

[4] AHS legal counsel did not object to either preliminary application.

Late filing of appeal

[5] Pursuant to section 5(3) of the *Public Health Act* (“**PHA**”), a person who is directly affected by a decision of a regional health authority and feels aggrieved by the decision may serve a notice of appeal on the Board within 10 days after receiving notice of the decision (in this case, the Order).

[6] The PHAB Secretariat received the Appellant’s notices of appeal of the Order (dated June 19, 2025) on July 2 and July 3, 2025. The notices of appeal were therefore filed out of time.

[7] The Appellant reported that he was not privy to the results of the verbal order provided to the Owner of the Premises, Mr. Lund, on June 12, 2025. He claimed the hard copy of the Order posted by the AHS EO on June 20, 2025, was removed by Mr. Lund resulting in the Appellant not receiving a hard copy of the Order until he retrieved it from the post office on June 24, 2025.

[8] The Chair considered the Appellant’s application for the Board to accept the notice of appeal, referring to the five guiding factors outlined by the Alberta Court of Appeal¹ when deciding whether to exercise the Board’s discretion to extend the time to appeal:

1. a *bona fide* intention to appeal held while the right to appeal existed;
2. an explanation for the failure to appeal in time that serves to excuse or justify the lateness;
3. an absence of serious prejudice such that it would not be unjust to disturb the judgment;
4. the applicant must not have taken the benefits of the judgment under appeal; and
5. a reasonable chance of success on the appeal, which might better be described as a reasonably arguable appeal.

[9] The Chair determined there was compelling evidence to accept the late filing of the notice of appeal after the 10-day statutory appeal period, most notably that:

¹ *Dureab v Ben-Harhara*, 2021 ABCA 128 [“*Dureab*”] at para 6.

- a) the Appellant's follow-up notice of appeal demonstrated his intention to appeal the Order, not just request a stay, while that right to appeal existed;
- b) his explanation for not being able to access and review a printed copy of the Order was plausible and justified the lateness of the filing;
- c) his request would not introduce serious prejudice to the consideration and decision of the appeal;
- d) the appeal hearing was scheduled within the 30 days outlined in the PHA and thus not unduly benefitting the Appellant by allowing him to remain in the Premises for an unreasonably longer time than originally ordered; and
- e) The Appellant's detailed outline of work required to address the conditions listed in the Order demonstrated his reasonable knowledge of home repairs and constituted a reasonably arguable appeal.

[10] Further, the Respondent (AHS) did not object to the application. Accordingly, the Board accepts the notice of appeal notwithstanding that it was filed late.

Stay of Order

[11] In the initial notice of appeal received July 2, 2025, the Appellant requested a stay of the Order to gain additional time to find alternate accommodations. He reported that his attempt to secure a possible alternative housing situation fell through on June 30, 2025 (the date he was supposed to have left the Premises). He was concerned that he would be "arrested and charged" if he was not given more time.

[12] In the follow-up notice of appeal received July 3, 2025, the Appellant amended the purpose of his request for a stay to that of a stay of the Order pending hearing. This change of mind reportedly came about as he reviewed the Order more closely and determined that he could address most of the deficiencies noted in the Order and those that he could not, he believed he could plausibly argue that they were not deficiencies.

[13] Regarding the application to grant a stay of order, the Chair considered the three-part test outlined by the Supreme Court of Canada² for granting a stay of a decision:

1. The applicant must demonstrate that the application raises a serious issue to be tried;
2. The applicant must demonstrate the possibility of irreparable harm occurring if a stay is refused; and
3. The applicant must demonstrate that the balance of convenience, taking into account the public interest, favours the granting of a stay, in that refusing the stay will cause more harm to the applicant than granting it will cause to the respondent (in this case, AHS).

[14] The Chair determined there was compelling evidence to grant the stay of order including:

- a) the Appellant demonstrated that his application raised a serious issue to be tried, in that he had provided the basis of an arguable appeal such that a hearing of his argument was merited;

² *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC).

- b) the Appellant demonstrated the possibility of irreparable harm occurring if the stay was refused, due to the time it would take the Appellant to find reliable alternate accommodation within his budget, particularly as he had lost his deposit for the alternate accommodation that fell through, accordingly, he would be without immediate shelter and a place to store his belongings; and
- c) The balance of convenience favoured granting a stay, in order to afford the Appellant an opportunity to argue that he could either address the deficiencies himself or argue why they were not deficiencies, and this was consistent with the public interest.

[15] On July 7, 2025, the parties were notified by email of the Chair's preliminary application decisions. The notification indicated both that:

- a) the notice of appeal would be accepted filed late; and,
- b) the deadline for occupants to vacate the Premises noted in the Order (June 30, 2025) would not apply until the Board had the opportunity to hear the Appeal and make its decision.

Decision of the Board regarding the Appeal of Order

[16] The Appeal was heard by a panel of the Board on July 31, 2025. On August 1, 2025, the Board issued a short-written decision to the parties, with further written reasons to follow. In the short decision, the Board indicated the Order would be varied.

[17] For the reasons that follow, the Board varies the Order.

Grounds of the Appeal of Order

[18] In the follow-up notice of appeal, the Appellant included the following grounds for appeal:

- a) the Order contained numerous mistakes and incorrect information;
- b) from his perspective, not all the deficiencies were health and safety issues (i.e., the window opening); and
- c) if given more time, he had the skills and expertise to address most of the deficiencies.

Issue

[19] The issue on the Appeal for consideration by the Board is:

- a) Should the Board confirm, reverse or vary the Order?

Jurisdiction

[20] There were no objections to either the composition of the Board's panel or that panel's jurisdiction to hear the Appeal.

Documents/Exhibits

[21] At the hearing on July 31, 2025, the following documents were entered as exhibits by agreement of the parties:

Exhibit A: AHS Disclosure and video received July 22, 2025

Exhibit B: AHS Written Submission received July 28, 2025

Exhibit C: Order of an Executive Officer – Closed for Tenant Accommodation

Purposes: Order to Vacate dated June 19, 2025

Exhibit D: Notice of Appeal received July 2, 2025, and Amended Notice of Appeal received July 3, 2025

Facts

[22] The Appellant is one of two tenants of the Premises. The owner is Mr. Walter Lund.

[23] The EO issued the Order pursuant to the **PHA**; the *Housing Regulation*, Alberta Regulation 173/99; and the Minimum Housing and Health Standards (“**MHHS**”). The Order set out the contraventions of the PHA, *Housing Regulation* and MHHS as they pertained to the condition of the Premises.

[24] The EO observed 21 violations of the *Housing Regulation* and the MHHS, specifically:

- a. Smoke alarms throughout the home are either not working or are expired, and must be replaced with wired-in units, in-kind with the original system.
- b. Both second-floor bedrooms to the left of the stairs have windows with an openable space of 9” x 25.75”, which does not meet egress requirements.
- c. The dining room ceiling has a hole where the drywall had collapsed due to water damage, exposing the second story’s subfloor.
- d. Water damage is visible on the dining room bulkhead.
- e. The upstairs main washroom bathtub spigot is loose and not properly secured. While no active leak was observed, its condition may be contributing to ongoing water damage, including ceiling deterioration in the dining room directly below.
- f. A significant section of the upstairs main bathroom’s floor tiles are missing or damaged, and the subfloor is wet and showing evidence of rot.
- g. The upstairs main bathroom’s toilet base is cracked and broken and appears to be leaking.
- h. The basement washroom shower has cracked, damaged, and missing tiles, allowing water infiltration.
- i. The basement washroom shower has what appears to be unfinished wood on the ceiling of the showering area. There is evidence of water damage around the perimeter and visible water staining.
- j. The basement washroom’s shower does not have control dials or a shower head.
- k. The basement washroom’s sink faucet is missing the temperature control knob.
- l. There is a missing ceiling tile over the toilet area in the basement washroom.
- m. The basement washroom has a hole in the ceiling near the opening for the mechanical room.
- n. The basement washroom does not have a door separating it from the unfinished mechanical room.
- o. There is a hole in the ceiling to the left of the basement sliding exterior door.
- p. The basement exterior sliding door is incapable of securely locking.
- q. The handrail on the upper portion of the stairs to the second floor does not extend to the top of the stairs.
- r. The handrail of the stairs leading to the basement is not secured to the wall.

- s. The second bedroom to the left at the top of the stairs has a broken electrical outlet faceplate.
- t. Combustible materials, including but not limited to cardboard boxes, paper products, and fabric items, were observed being stored in close proximity to the furnace and hot water heater in the mechanical room. These items were piled in a manner that presents a fire risk due to potential ignition from the furnace's heat output and open flame pilot light, as identified by the Fire Marshal on site.
- u. A substantial accumulation of belongings and garbage is being stored on both the back upper balcony and lower yard. These materials are exposed to the elements; attracting pests and creating conditions that may promote the growth of mold or bacteria. This accumulation is also obstructing safe egress routes.

[25] In the Order, the EO ordered and directed the following:

1. That the occupants vacate the above noted premises on or before June 30th, 2025.
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 all expired or non-functional smoke alarms with hardwired units consistent with the original system throughout the dwelling, and in accordance with all applicable codes.
 - b. Replace or modify the bedroom windows in both second-floor bedrooms (left of the stairs) to meet minimum egress requirements.
 - c. Repair and properly finish the dining room ceiling where drywall has collapsed.
 - d. Assess and remediate water damage on the dining room bulkhead, addressing any underlying cause of moisture.
 - e. Secure the upstairs main bathroom bathtub spigot to prevent further water leakage and damage.
 - f. Replace missing or damaged floor tiles in the upstairs main bathroom and repair or replace rotted subflooring.
 - g. Replace the cracked and leaking toilet in the upstairs main bathroom.
 - h. Repair or replace all cracked, damaged, and missing tiles in the basement washroom shower to prevent water infiltration.
 - i. Replace the unfinished wood ceiling in the basement shower area with a suitable, water-resistant material, and remediate water damage around the perimeter.
 - j. Install functioning control dials and a shower head in the basement washroom shower.
 - k. Replace or repair the sink faucet in the basement washroom to ensure functioning water control.
 - l. Replace the missing ceiling tile over the toilet area in the basement washroom.
 - m. Repair the ceiling near the mechanical room opening in the basement washroom.
 - n. Install a functional door separating the basement washroom from the mechanical room to provide adequate separation.
 - o. Repair the ceiling hole to the left of the basement sliding exterior door.
 - p. Repair or replace the basement sliding door to ensure it can be securely locked.
 - q. Extend the second-floor stair handrail to the top of the stairs to comply with safety standards.
 - r. Secure the handrail of the basement stairs firmly to the wall.
 - s. Replace the broken electrical outlet faceplate in the second bedroom left of the stairs.
 - t. Remove combustible materials (e.g., cardboard, paper, fabric) from the mechanical room and maintain clear space around the furnace and hot water heater, as per fire safety recommendations.

- u. Remove the accumulation of belongings and garbage from the upper balcony and lower yard to eliminate pest attractants, prevent mold growth, and maintain safe and unobstructed egress routes.
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.

Submissions of the Appellant

[26] The Appellant did not submit any disclosure prior to the hearing or invite any witnesses. The information documented below was either presented by the Appellant as arguments for his case or provided in response to questioning at the hearing.

[27] Oral submissions relevant to the appeal of the Order are summarized as follows:

- a) The owner/landlord of the Premises, Mr. Lund, did not disclose known issues in the rooms used as rental suites prior to the Appellant signing the rental agreement and providing rental payments upfront for May 2025 and then for June to August 2025.
- b) After an attempt to find alternate accommodation fell through, after first hearing about the Order, the Appellant reviewed the list of conditions and was able to come up with a plan to rectify most of the issues. He would pay for any materials required and provide labour in exchange for future discounts on rent.
- c) As of the date of the hearing, the Appellant reported that all the issues are now rectified except for those in the basement suite occupied by the other renter and the upstairs bedroom egress requirement.
- d) He argued that the bedroom egress requirement was unreasonable as the window panel, designed to prevent a child from falling out the window, was easy to remove if needed to permit adequate exit access in case of fire or other type of emergency.

[28] The following additional information was reported by the Appellant under questioning by AHS:

- a) When asked what training he has that qualifies him to undertake the remediation of the violations, the Appellant confirmed he is not certified in the trades and does not hold a degree in engineering. He reported that he was the landlord of rental properties in the past and was required to do regular repairs and believed this qualified him to do the work that is necessary.
- b) Regarding the size of the window in his room and how to remove it for exiting if needed, the Appellant stated that the window is three feet wide with a nine-inch opening. To remove it, the interior window panel needs to be lifted approximately one inch to dislodge from the lower track, then angled outward and lowered down to dislodge from the upper track.
- c) When asked which repairs have been completed so far to the upstairs bathroom used by the Appellant and Mr. Lund, due to the ensuite bathroom not being useable, the Appellant stated that he replaced the tiles and the damaged subfloor; purchased a new toilet to install once the new tile flooring adhesive dries and has been grouted; purchased and installed the new water shut-off valve; tightened and caulked the tub

spigot, which was determined as the source of the water leak; and painted behind the toilet.

- d) When asked which deficiencies remain in the downstairs bathroom used by the other tenant, the Appellant stated that the tenant is not always agreeable to permitting people to enter but the Appellant is aware of broken tiles on the shower lip; the cedar boards in the shower are not a smooth, washable surface; and the ceiling tile above the toilet is missing. He has been able to replace the missing shower faucets.
- e) When asked for the status of the opening between the downstairs bathroom and the mechanical room, the Appellant stated that nothing has been completed yet as the options for a door for such a narrow opening are limited. The Appellant is aware of a mouse sighting reported in April, but nothing has been seen since. The Appellant is still looking into alternatives such as a retractable door.
- f) When AHS asked for the reason why there was no access to hot water, which was not included in the current Order but noted in subsequent inspections, the Appellant stated that the gas was shut off in April when Mr. Lund did not pay an outstanding balance of \$1,600 to the utility's provider. The Appellant reported that Mr. Lund lied on the rental agreement, as it was indicated that rent included access to all utilities, internet, cable, and a fridge, stove, washer and dryer, none of which are currently available.
- g) When asked if he was present when the AHS EO posted the Order on the door of the Premises on June 20, 2025, the Appellant reported being present and had a conversation with the AHS EO requesting the Order be emailed but was on his way to a family function out of town so could not access or read any emails until he was back on June 23, 2025.

[29] The following additional information was provided by the Appellant under questioning by the PHAB panel:

- a) When asked how he planned to address the absence of heat and hot water, the Appellant stated that he will apply for a new account in his own name through a different utility provider. He is willing to put the gas payments for the entire property towards any future rent payments and confirmed that the landlord has agreed to this plan.
- b) When asked to clarify which deficiencies the Appellant was addressing and who would cover the costs, the Appellant confirmed that he is currently covering the costs of all materials and is providing the labour required for remediation of all three floors of the Premises (walkout basement, main floor and upper floor that has three bedrooms and two bathrooms) in exchange for deductions in rent as agreed upon with the landlord.
- c) The PHAB panel asked the Appellant if there was a possibility of switching rooms with Mr. Lund, as switching rooms was an option proposed by the AHS EO because the bedroom window in Mr. Lund's room has proper egress. The Appellant reported that even though Mr. Lund agreed to this at the time it was proposed, Mr. Lund had done nothing about moving his things out. Also, the Appellant stated that he would prefer to move into the basement suite as the toilet in Mr. Lund's bathroom is non-functional.
- d) The PHAB panel asked the Appellant why he wants to continue living in the Premises if the landlord has misled him (and others before him) and the living conditions are so

bad. The Appellant stated that finding low-cost rental accommodation in St. Albert is not easy, and it is where the Appellant grew up and where his friends are. The townhouse will be nice once the repairs are done, and rent is very economical at \$325 per month.

- e) When asked for clarification of the age of the townhome complex, the Appellant stated that the townhouse is in phase two of a three-phase complex that was started in 1977. The Appellant is not certain the exact date the Premises were built but all the townhomes have been updated with new windows, siding and roofs and the property is well maintained.

Submissions of the Respondent

[30] AHS counsel provided the Board with their disclosure on July 22, 2025, and written submissions on July 28, 2025.

[31] AHS' disclosure included written statements, a video of the window in question as well as photos of several of the primary deficiencies.

[32] AHS counsel provided an opening statement to clarify the issues before the Board, including:

- a) Whether specialized knowledge is required to remove the pane of the window in the Appellant's bedroom to afford sufficient egress; and
- b) Whether this lack of egress, and the remaining deficiencies, continue to pose a risk of harm to public health and safety.

[33] AHS counsel called AHS EO Katelyn Andrews as a witness. Her key testimony is summarized below.

[34] An initial inspection of the Premises was conducted on April 23, 2025, with AHS EOs Katelyn Andrews and Karen Hislop, a fire prevention officer (for complaints of overcrowding and absent smoke alarms) and a safety codes officer (with expertise in subflooring, structural integrity and window egress). At that time, the owner was provided with 30 days to remediate the most critical violations of the *Housing Regulation* and MHHS. This inspection occurred prior to the Appellant's signing of the rental agreement and his move-in date.

[35] At the follow-up inspection of June 12, 2025 (after a failed attempt on June 2, 2025), AHS EOs Andrews and Hislop noted that no remediation of the violations had been undertaken by the owner other than the purchase of two out of date smoke alarms that were still in their packaging. Mr. Grant was present at the inspection. They were not able to reassess the basement as the tenant was sleeping and not able to restrain his large dog.

[36] The lack of remediation since the initial April inspection informed Ms. Andrew's decision to issue the Order. The owner was notified of the Order the same day as the inspection. The written Order was prepared June 19, 2025, with notice of the Order delivered and posted on the owner's door June 20, 2025. The Appellant was reportedly notified by Ms. Hislop of the Order by phone and the implications of the Order on his tenancy was discussed.

[37] A photo and video of the window at issue showed a 32” wide by 25.8” tall window opening but with a two-thirds/one-third slider that limited the opening to 9” by 25.8”. Neither of the AHS EOs were familiar with how the window was to be removed. After watching the Appellant demonstrate how the windowpane could be removed to permit egress, and a follow-up discussion with the safety codes officer, it was deemed that removal of the pane required special knowledge. Thus, the window in the bedroom the Appellant uses, and the window in the other spare bedroom on the second floor, do not meet the unobstructed opening requirements of the MHHS (which refers to the Appendix for Part 9 of the National Building Code 2023 Alberta edition).

[38] In a follow-up inspection conducted July 29, 2025, Ms. Andrews reported that many of the violations had been remedied but not all. Issues remaining include the lack of proper egress in the second-floor bedrooms; no proof that the subfloor in the second floor bathroom has been replaced as it has been tiled over; newly placed tiles still need to be grouted and caulked; new toilet still not installed; no working smoke alarms; the new drywall to fill the water-damaged hole in the dining room ceiling required sanding and painting; damaged tiles in the basement shower; basement shower ceiling is not smooth and moisture resistant; absent ceiling tile in the basement bathroom; and, no door separating the unfinished mechanical room and the basement bathroom. There was also the new issue of no gas (thus no hot water or heat) arising since the June 12 inspection.

[39] The following additional information was provided by Ms. Andrews under questioning by the Appellant. Due to some repetition in the Appellant’s questioning, only answers to questions adding information crucial to the panel’s decision are included below.

- a) The Appellant asked Ms. Andrews whether, if the current tenants are evicted because the Order still stands, she feels the landlord would try to re-rent the basement suite and upstairs bedrooms. Ms. Andrews believed he would which is why due process is being followed to ensure the Order is complied with. There have been issues with the Premises for two years, as the owner has not permitted access for the AHS EOs to prove that tenant accommodations are being provided. AHS EOs do not have jurisdiction to enter owner occupied homes without consent or pursuant to an order under section 61 of the PHA. There have been numerous complaints brought forward by neighbours, bylaw officers and the RCMP. There are also unverifiable complaints from former tenants of their belongings being destroyed, damage deposits not returned and evictions after rent has been paid.
- b) When asked why waterproof paint was insufficient for the wood ceiling in the basement shower, Ms. Andrews stated that all the cracks and grooves need to be filled in and sanded prior to applying the waterproof paint.
- c) When asked why AHS has concern about the opening between the mechanical room and the bathroom, Ms. Andrews stated that the MHHS requires that all spaces and surfaces used for tenant living areas are to be finished. Moisture from the bathroom can enter the mechanical room and cause water damage and/or mold growth. Pests may also enter the living space from the mechanical room via the bathroom if it is not closed off.

[40] The following additional information was provided by Ms. Andrews under follow-up questioning by AHS legal counsel and questioning by the PHAB panel.

- a) When asked whether, if the Appellant moved into the master bedroom, that would satisfy AHS's requirements, Ms. Andrews indicated it would, as the window has a different sized pane. The master bedroom is extremely dirty and the toilet flushing mechanism in the ensuite does not work but can still be operated by pouring water in to instigate a flush. Or the new toilet purchased for the shared second floor bathroom could be installed in the master ensuite instead.
- b) When asked what type of door would suffice between the mechanical room and the basement bathroom, Ms. Andrews stated that the requirements could possibly be met by a retractable door that provided a sufficient seal to prevent moisture from the bathroom going into the mechanical room, and to prevent pests from entering the living space from the mechanical room via the bathroom. Ms. Andrews further mentioned that something like a retractable screen door but with a more impermeable material instead of a standard screen door mesh would be sufficient.
- c) Ms. Andrews was asked why AHS is not able to escalate to prosecution. She replied that it is not a decision that AHS EOs are permitted to make. AHS EOs follow a process of progressive enforcement which can include offering the owner an opportunity to rectify identified violations before an order is issued. If an order is issued and is still not complied with, AHS EOs are expected to bring the situation to their superiors for consideration and decision at a higher level to determine if the situation should be escalated to prosecution.
- d) When asked if the Appellant could move into the basement if the violations in the basement are remedied, Ms. Andrews confirmed that he could, once a reinspection has been conducted and evidence of satisfactory remediation has been observed.

Analysis and Reasons

Standard of Review

[41] In order to decide the Appeal, the Board must first determine the standard of review that it must apply to its assessment of the Order. This engages a review of the applicable legislative scheme, in particular, the following sections of the PHA:

5(3) A person who

(a) is directly affected by a decision of a regional health authority, and

(b) feels himself or herself aggrieved by the decision may appeal the decision to the Board.

5(1) In this section, "decision of a regional health authority" means

(a) an order issued under section 62, and

(b) a decision to issue or to cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations, and any other decision in respect of which an appeal to the Board is permitted under the regulations, whether any of those decisions is made by the regional health authority itself

or one of its employees or agents.

9 *A regional health authority shall appoint one or more persons as medical officers of health and one or more persons as executive officers for the regional health authority for the purpose of carrying out this Act and the regulations.*

62(1) *An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on*

- (a) an inspection of a public place under section 59 or a private place under section 60, or*
- (b) a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60,*

that a nuisance exists in or on the public place or private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.

5(11) *The Board may confirm, reverse or vary the decision of the regional health authority and shall give written notice of its decision to the appellant and the regional health authority.*

Alberta Courts have provided administrative decision-makers with guidance in making their decisions, which can be summarized as follows. In *Moffat v Edmonton (City) Police Service*³, the Alberta Court of Appeal reviewed the relevant caselaw and held that “internal administrative appeals are of multiple types and therefore do not admit to one single approach to standard of review”.⁴ In *Yee v Chartered Professional Accountants of Alberta*⁵, the Alberta Court of Appeal held that “[t]he appeal tribunal should ... remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review”.⁶ In *Newton v Criminal Trial Lawyers’ Association*⁷, the Alberta Court of Appeal identified several factors to guide the determination of the appropriate standard of review for an appellate administrative tribunal. These include: the respective roles of the first-instance and appellate tribunals under the enabling legislation; the nature of the issue; the overall statutory scheme; the expertise and position of the first-instance tribunal relative to the appellate body; and considerations of efficiency, including the need to limit the number, length, and cost of appeals, and to preserve the economy and integrity of the original proceedings.⁸

[42] After thorough consideration of judicial guidance provided, and reading the relevant sections of the PHA harmoniously with the intention of the legislature, the Panel is satisfied that the appropriate standard of review to be applied in this Appeal has been articulated in section 62(1) of the PHA.

³ *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 [Moffat].

⁴ *Ibid* at para 55.

⁵ *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98.

⁶ *Ibid* at para 35.

⁷ *Newton v Criminal Trial Lawyers’ Association*, 2010 ABCA 399 [Newton].

⁸ *Ibid* at para 43.

This standard is: whether there are reasonable and probable grounds to believe either that a nuisance exists on the property or that there is a contravention of the PHA, or the regulations and standards based on an inspection or a report or test, such that the order under appeal is warranted.

[43] In *Canada (Minister of Citizenship and Immigration) v Vavilov*⁹, the Supreme Court of Canada provided instruction on the application of the reasonableness standard of review. The focus of a reasonableness review is on the reasons. A decision will be reasonable if it is both internally consistent and justified in light of the legal and factual constraints that bear on the decision.¹⁰

[44] Unlike the judicial review approach established in *Vavilov*, the standard of review adopted by the Board represents a hybrid procedure. This approach involves reviewing all the relevant records supplemented with *viva voce* (live witness oral) evidence, while also allowing portions of the hearing to be conducted on the documentary record. As the Board is not a court, it is not bound by the strict rules of evidence applicable to courts. The Board's authority is limited to confirming, reversing, or varying an order of an AHS EO, without extending beyond these options as provided in the PHA.

[45] In conclusion, by adopting this hybrid standard of review, the Board can effectively balance the need for procedural flexibility and thoroughness with respect for the specialized expertise and initial findings of AHS EOs. This approach ensures that the appeal process remains efficient and cost-effective, while preserving the integrity of the original proceedings and allowing the Board to make well-informed decisions that uphold public health standards consistent with the objectives of the PHA.

Findings and Conclusion

[46] After reviewing the parties' disclosure, submissions, evidence and arguments, the Board has determined the Order issued by AHS on June 19, 2025, shall be varied as follows:

- a) The occupants shall vacate the Premises on or before 6:00pm on August 31, 2025, unless all work required to bring the Premises into compliance with the Order is completed by that date to the satisfaction of an AHS EO.
- b) Electrical and natural gas services shall be reinstated with proper billing to the responsible individual.
- c) The remainder of the Order is confirmed as written and shall remain in effect until it is rescinded by AHS.

Reasons for this decision are:

[47] The Board recognizes the tremendous effort and costly resources put into the Premises by Mr. Grant during his tenancy and his desire to stay in the accommodation. The Board wishes to facilitate that, subject, however, to the important safety considerations that are properly raised by the Order.

⁹ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

¹⁰ *Vavilov*, at paras 99-101.

[48] The Board acknowledges and accepts the statement of the safety codes officer indicating that 2023 building codes require that no “special knowledge” is needed to remove a window to afford egress. The window currently in place does require “special knowledge” and is therefore not compliant with 2023 building codes and poses a public safety risk, specifically to any occupants of the Premises. Accordingly, this must be addressed.

[49] The MHHS require that the plumbing system and sanitary drainage system be maintained in a proper operating condition, and that washbasins, bathtubs and showers shall be supplied with potable hot and cold running water. For safety and hygiene reasons, the bathrooms in question must be repaired, waterproofed, plumbed and able to be cleaned in accordance with current housing standards.

[50] The MHHS require that bathrooms have walls and floors that are smooth, non-absorbent to moisture and easy to clean, and that walls shall form a watertight joint with each other, the floor, and the ceiling. The opening from the basement bathroom into the unfinished mechanical does not meet this requirement and accordingly this must be addressed.

[51] The MHHS note that electrical and natural gas services are essential utilities and must be available and reliable in a tenant accommodation for health and safety reasons, and accordingly this must be addressed.

[51] For the reasons given above, the Order is varied as described above.

original signed

Kevin Kelly, Chair

On behalf of the Hearing Panel of the
Public Health Appeal Board

Date: **October 28, 2025**