

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 JANUARY 16, 2023**

PANEL: Kevin Kelly, Chair
Vicki Wearmouth, Member
Paul M. Bourassa, Member
David Rolfe, Member

BETWEEN:)	
)	
)	
)	
Allen Antoniuk)	Self-Represented
)	
(Appellant))	
)	
- and -)	John Siddons,
)	Alberta Health Services,
ALBERTA HEALTH SERVICES)	for the Respondent
)	
(Respondent))	
)	
)	
)	
)	Heard: February 14, 2023
)	
)	
)	

DECISION AND REASONS FOR DECISION

The Appeal

[1] On January 23, 2023, the Public Health Appeal Board received a notice of appeal (the “Notice of Appeal”) from Allen Antoniuk (the “Appellant”) to reverse an order of an Executive Officer (the “EO”) dated January 17, 2023 (the “Order”) for the property owned by the Appellant to be closed for tenant accommodation as a result of a number of deficiencies identified during a previous inspection.

[2] Written submissions were submitted by the Appellant on February 5, 2023, and the Respondent, Alberta Health Services (“AHS”), on February 10, 2023.

[3] On February 14, 2023, the appeal hearing (the “Appeal”) was heard via video by a panel (the “Panel”) of the Public Health Appeal Board (the “Board”).

Board Decision

[4] On February 16, 2023, the Panel rendered its decision to vary the Order.

Background

[5] The Appellant is the registered owner of the subject property, a single-family house which was being used as a rental dwelling, located at 5418 – 50 Avenue, Lamont, Alberta (the “Property”).

[6] Following a complaint, an AHS public health inspector on December 8, 2022, inspected the Property and identified several deficiencies, which led to the issuance of the Order. The Order directed the Property to remain closed for tenant accommodation until the Appellant completed the following work to the Property:

- (a) ensuring the storm sash in the bedroom is in a condition that allows for emergency egress;
- (b) providing a report from a structural engineer which assesses the structural safety of the dwelling, including the crawlspace;
- (c) ensuring all windowpanes are in place and they are in good condition;
- (d) ensuring that the front and back doors are in weatherproofed condition;
- (e) ensuring that the bathroom has natural or mechanical ventilation;
- (f) ensuring that there is a shower head and that the bathtub/shower diverter is working; and
- (g) ensuring that the hole in the wall that was formerly used to vent the dryer is sealed and weatherproofed.

[7] The Board received the Appellant’s Notice of Appeal on January 23, 2023.

Timing of Appeal

[8] Section 5(3) of the *Public Health Act* (the “Act”) requires the Appellant to serve a Notice of Appeal within 10 days after receiving notice of the decision being appealed.

[9] The Public Health Appeal Board Secretariat received the Appellant’s Notice of Appeal on January 23, 2023. The Notice of Appeal was therefore filed on time.

Grounds of the Appeal

[10] In the Notice of Appeal, the Appellant submitted one ground for appeal:

- (a) that the hair line cracks described in the Order were superficial and likely caused by the tenants when they created large holes in the walls in the kitchen and the bedroom.

Legal Issues

[11] The Panel must consider the following issue on the Appeal:

- (a) Should the Panel confirm, reverse or vary the Order of the EO, which closed the property for tenant accommodation purposes?

Jurisdiction

[12] There are no objections to the Panel’s jurisdiction to hear the Appeal.

Documents/Exhibits

[13] Prior to the commencement of the Appeal, the following documents were entered as exhibits by agreement of the parties:

Exhibit A – Appellant - Photos (55 pages)

Exhibit B – Appellant - Email from Pro Home Renovations

Exhibit C – AHS Disclosure

Exhibit D – AHS Submissions

Submissions of the Appellant

[14] In this matter, the Appellant provided written submissions, including photographs and an email from Dan at Pro-home Renovations. What is herein summarized is the information provided in those written submissions, the Notice of Appeal, the Appellant’s witnesses, and the submitted photographs.

[15] The Appellant submitted that the hair line cracks that the EO had mentioned in the Order were superficial and likely caused by the tenants themselves when they created large holes in the walls in the kitchen and the bedroom.

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[16] The Appellant submitted that a home inspector on site had verified the squareness and levelness of the structure and provided a written statement and photographic evidence.

Submissions of the Respondent

[17] The submissions of the Respondent, AHS, with respect to this Appeal are summarized as follows.

[18] AHS submitted that the Property subject to this Appeal is an 80 to 90 year-old house, which contains a dirt crawlspace with low clearance.

[19] AHS submitted that the Property has been consistently used for tenant accommodation, but at the time of this Appeal, AHS did not believe there were tenants living in the Property.

[20] On December 2, 2022, AHS received a call to its complaint line from a tenant concerned that there may be structural issues with the Property and wanted to make sure it was safe.

[21] On December 8, 2022, AHS Public Health Inspector Brian Levine attended the Property to conduct an initial inspection. He identified several deficiencies, including the lack of emergency egress in any bedrooms, the lack of operational smoke detectors, cracked windows and windows with missing windowpanes, and the presence of several large, hairline cracks in the kitchen and one bedroom. AHS Public Health Inspector Levine verbally advised the Appellant that AHS would be seeking a report from a specialist to assess the structure of the Property.

[22] On January 11, 2023, AHS Public Health Inspector Levine, accompanied by Linda Duong, another AHS Public Health Inspector, attended the Property to carry out a re-inspection. The Property was no longer occupied but a person believed to be a contractor for the Appellant was on site. The Appellant arrived during the later part of the inspection. It was noticed that some deficiencies had been corrected. The cracks identified in the initial inspection had been painted over and were no longer visible.

[23] On January 12, 2023, AHS Public Health Inspector Levine contacted, via e-mail, Ryan Nixon, a Director with the Inspections Group Inc., who was understood to be contracted with the Town of Lamont to provide safety code services to the town. Mr. Levine provided in his email photos which the tenant had provided of the Property's crawlspace and described the cracks that had been observed. He requested Mr. Nixon's view of the photos and requested his opinion as to whether a further assessment would be beneficial.

[24] On January 12, 2023, Mr. Nixon replied to AHS Public Health Inspector Levine that in his view, while he did not believe the Property presented any imminent dangers, his recommendation would be to have an engineer review the structure of the building and indicated that a foundation repair specialist would not be qualified to give a structural evaluation of the building.

[25] On January 16, 2023, AHS Public Health Inspector Levine issued the Order for the Property, directing it remain unoccupied until such time as the Appellant had addressed the outstanding deficiencies.

[26] On January 17, 2023, the Appellant was given verbal notification of the Order, which was followed on January 18, 2023, by a written copy of the Order.

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[27] On January 17, 2023, AHS Public Health Inspector Levine returned to the Property to determine occupancy and to conduct a cursory walk around.

[28] On January 24, 2023, AHS Public Health Inspector Levine returned to the Property to affix to the Property's door a copy of the Notice: Closed for Tenant Accommodation purposes accompanying the Order. No inspection was conducted at this time.

[29] AHS submitted that, pursuant to the Order, the Property is to remain untenanted and vacant until such time as it has been confirmed that the emergency egress issue has been satisfactorily addressed.

[30] AHS submitted that section 3(b)(i) of the *Minimum Housing and Health Standards* expressly requires that all rooms used as a bedroom be equipped with a window that can be used for emergency egress, unless the room is sprinklered or has a door opening directly to the exterior.

[31] AHS submitted that a structural assessment is required given that:

- (a) The *Housing Regulation* (section 3(1)(a)(i)), and *Minimum Housing and Health Standards* (section 1) requires that a tenanted dwelling be in sound structural condition, including a crawl space in good repair;
- (b) There are legitimate concerns regarding whether the Property is in fact structurally sound given: (i) the cracking observed in the unit; and (ii) the photos of the crawlspace which raise concerns as to whether the substructure is in good repair; and,
- (c) Safety Codes, upon reviewing the photos of the crawlspace and being advised of the cracking, have recommended that a further review be conducted by an engineer.

[32] AHS submitted that section 1(d) of the *Minimum Housing and Health Standards* expressly provides that AHS is entitled to enlist the assistance of a professional structural engineer or a Safety Codes Officer to assist in overseeing the repair or remediation of any structural element of a housing premise.

[33] AHS further submitted that, given the Property's current state, it would be unreasonable to postpone a structural review for an indefinite period, or to simply wait until the situation escalates before taking action. Given the Property's current state, AHS submitted that its preliminary suspicions are not unfounded and merit further examination by way of an additional assessment.

Analysis and Reasons

Should the Board confirm, reverse or vary the Order of an Executive Officer Closed for Tenant Accommodation Purposes?

[34] Pursuant to section 5(11) of the Act, the Board may confirm, reverse or vary the decision of the regional health authority (in this case, the Order). The Panel has carefully considered the parties' submissions and evidence and finds that the Order should be varied. The Panel's reasons follow.

[35] In this appeal, the Appellant articulated one ground of appeal: that the hair line cracks described in the Order were superficial and likely caused by the tenants when they created large holes in the walls in the kitchen and the bedroom. The Appellant did not take issue with the work required to be performed in the Order and would complete all of it, except that he disagreed with the direction that a report from a structural engineer was required.

[36] AHS did not assert that the Property's structure presented an immediate risk to tenants, and AHS took no position about the severity of the cracks and the Property's structural integrity. Instead, AHS asserted that based on its observations and recommendation from Safety Codes, a further assessment of the Property was required to determine the scope of the Property's structural issues.

[37] AHS further contended in paragraph 8 of its written submissions that "the most appropriate outcome for this appeal is that the request for a further structural assessment be maintained as a pre-condition to lifting the Order's prohibition on tenant accommodation, or alternatively, that this requirement be incorporated into a new work order with a mandated time frame for completion."

[38] The Panel finds the following regulatory provisions to be noteworthy:

- Section 2(1) of the *Nuisance and General Sanitation Regulation*, Alta Reg 243/2003 mandates that "no person shall create, commit or maintain a nuisance", while section 1(f) defines a nuisance as "a condition that is or might become injurious or dangerous to the public health, or that might hinder in any manner the prevention or suppression of disease".
- Section 3(1)(a) of the *Housing Regulation*, Alta Reg 173/1999 requires an owner to ensure that housing premises are structurally sound, in a safe condition, in good repair, and maintained in a waterproof, windproof and weatherproof condition.
- Section 5(2) of the *Housing Regulation* prohibits any person from causing or permitting "any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention or suppression of disease".

[39] Based on its consideration of the parties' submissions, arguments and evidence, the Panel finds that AHS has proven that when it performed its inspections, the condition of the Property showed deficiencies which confirmed that the Property was in breach of the Act, the *Housing Regulation* and the *Minimum Housing and Health Standards* and that a nuisance existed, including:

- (a) The storm sash for the bedroom window appeared to be nailed into place, which could prevent emergency egress;
- (b) The kitchen wall and bedroom ceiling contained multiple sizeable cracks;
- (c) The bedroom window was missing a windowpane; and,
- (d) The front and back door were not properly weatherproofed.

[40] The Panel notes that the Appellant did not take issue with the work required to be performed in the Order. The Appellant confirmed that he would complete the work listed in the Order to cure the noted deficiencies. While the Panel finds that the condition of the Property at the time of the AHS inspection constituted a nuisance, the Panel is not satisfied that a report from a structural engineer was required. AHS did not provide compelling evidence to support its contention that a structural engineer's report was warranted.

[41] The Panel notes the testimony of Dan Ricard, who the Appellant called as a witness. Mr. Ricard has 35 years' experience in the construction industry, and he observed that the crawl space at the Property contained a tamarack board which showed no signs of rot and was in good condition.

[42] The Panel further notes that, when questioned by the Panel, AHS Public Health Inspector Levine confirmed that no one went into the crawl space to make observations about whether its condition posed a potential nuisance, even though they would normally do so. The Panel agrees with the Appellant that Mr. Ricard possessed more relevant experience than the AHS Public Health Inspectors and the EO to assess the structural integrity of the Property.

Findings and Conclusion

[43] After carefully reviewing the evidence, and considering the submissions and arguments made by the Parties, the Panel makes the following findings:

- (a) The condition of the Property showed deficiencies which confirmed that the Property was in breach of the Act, the *Housing Regulation* and the *Minimum Housing and Health Standards* and that a nuisance existed.
- (b) AHS did not prove on a balance of probabilities that a structural engineer's assessment and report was warranted.

[44] Based on its findings, the Board varies the Order to be amended as follows:

- (a) The EO's directions 1 and 3 are confirmed. The Property must remain vacant until the work referred to in the Order, with the exception of direction 2(b), is completed to the satisfaction of an AHS Executive Officer.
- (b) AHS must remove direction (2b).

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

[Original signed]

Kevin Kelly, Chair

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

Date: June 28, 2023

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