

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 2, DATED JUNE 23, 2022

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

| | | |
|---------------------------------|---|------------------------------------|
| BETWEEN: |) | |
| |) | |
| |) | |
| 812161038 INCORPORATED, |) | Megan Stoker, |
| (Maymee Lum, Director) |) | Peacock Linder Halt & Mack LLP |
| |) | |
| Appellant |) | |
| |) | |
| -and- |) | |
| |) | |
| ALBERTA HEALTH SERVICES, ZONE 2 |) | |
| |) | Kyle Fowler, |
| Respondent |) | Alberta Health Services |
| |) | |
| |) | |
| |) | Stuart Chambers, |
| |) | McLennan Ross LLP, |
| |) | Independent Counsel for the Board |
| |) | |
| |) | |
| |) | Heard via Video: September 2, 2022 |

DECISION AND REASONS FOR DECISION

Introduction

[1] This is an appeal (the “Appeal”) from an Alberta Health Services (“AHS”) June 23, 2022 Closed for Tenant Accommodation Purposes Order to Vacate (the “Order”).

[2] The Order closed Unit 5 (“Unit 5”) in the property municipally described as, 1543-34 Avenue SW, Calgary, Alberta, (the “Premises”), which is owned by 812161038 Incorporated (the “Appellant”).

[3] The Appellant appealed the Order to the Public Health Appeal Board (the “Board”), seeking to have it rescinded entirely or varied. The Board received the notice of appeal on July 4, 2022 (the “Notice of Appeal”).

[4] The appeal hearing took place before a panel of the Board (the “Panel”) via video and telephone, on September 2, 2022 (the “Appeal Hearing”).

[5] On November 3, 2022, the Board issued by letter its decision to the Appellant and the Respondent. The Board confirmed the Order, with detailed written reasons to follow.

Background

[6] On June 16, 2022, AHS received a complaint that alleged Unit 5 of the Premises had many water leaks and flooding that the Appellant had refused to properly address.

[7] On June 17, 2022, an AHS Executive Officer attended the Premises to inspect it and Unit 5 (the “June Inspection”). A number of alleged violations were observed in contravention of the *Public Health Act*, RSA 2000 (the “Act”), c. P-37, the *Housing Regulation*, Alta Reg 173/1999 (the “Housing Regulation”) and the *Minimum Housing and Health Standards* (the “MHHS”).

[8] When AHS Executive Officer George Johnson (“EO Johnson”) was preparing the report following the June Inspection (the “June Inspection Report”), AHS alleged that the Premises had previously been subject to four inspections between June 2019 and March 2020, during which many of the same violations had existed, as were observed during the June Inspection.

[9] On June 23, 2022, AHS verbally informed the Appellant about the Order and provided the Order in written form on June 24, 2022.

[10] The Appellant appealed the Order and served the Notice of Appeal on the Board, which it received on July 4, 2022.

Timing of Appeal

[11] Section 5(3) of the Act requires the Appellant to serve a notice of appeal on the Board and the regional health authority within 10 days after receiving notice of the decision being complained of.

[12] The Notice of Appeal was to be served on the Board within 10 days after receiving notice of the Order. Accordingly, the Notice of Appeal was to be served on the Board by July 3, 2022.

[13] Because July 3, 2022 was a Sunday and the Board's office was closed that day, the Board received the Notice of Appeal on Monday, July 4, 2022. July 4, 2022 was 11 days from the day AHS verbally informed the Appellant of the Order.

[14] Pursuant to section 22(2) of the *Interpretation Act*, the time for service of the Notice of Appeal was extended to the next following day on which the office of the Board was open:

(2) If in an enactment the time limited for registration or filing of an instrument, or for the doing of anything, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.

[15] Accordingly, the deadline for service of the Notice of Appeal was July 4, 2022. Therefore, the Notice of Appeal was served on the Board with 10 days after receipt of notice of the Order.

Grounds of the Appeal

[16] The grounds of appeal do not appear to take issue with the substance of the Order so much as they take issue with the process of granting and delivering the Order. The grounds of appeal can be summarized as follows:

- i. EO Johnson incorrectly ordered repairs to be completed that were not critical and not a violation of the MHHS.
- ii. EO Johnson made errors of fact (whether windowpanes were missing).
- iii. EO Johnson acted unfairly in issuing the Order to vacate when an order providing a deadline to complete repairs was more appropriate given the alleged deficiencies.
- iv. EO Johnson was improperly motivated to make the Order.
- v. The Order was not justified given the lack of life safety issues and lack of any order deeming the Premises unfit for human habitation.

Legal Issues

[17] The legal issues put forward by the parties and considered by the Panel in the Appeal are summarized as follows:

Appeal 06-2022

- i. Whether AHS exercised its authority and discretion reasonably, and with minimum impact when it inspected the Premises and ultimately issued the Order; and
- ii. Whether to confirm, reverse or vary the Order.

Jurisdiction

[18] All of the grounds of appeal fall within the jurisdiction of the Board. The grounds of appeal relate to the findings of fact made by the AHS Executive Officer and whether those facts should have resulted in an Order to vacate (or a lesser order to complete repairs by a deadline).

Documents/Exhibits

[19] The Board received written submissions from the parties, which were entered as exhibits at the Appeal as follows:

- i. Exhibit A – Appellant Written Submissions
- ii. Exhibit B – Appellant Disclosure
- iii. Exhibit C – AHS Submissions
- iv. Exhibit D – AHS Disclosure

Appellant’s Position

[20] The Appellant submits that EO Johnson unreasonably and improperly exercised his discretion by making the Order when the Appellant had already identified a plan to remedy the critical issues and a lesser enforcement measure was appropriate.

[21] Furthermore, the Appellant submits that EO Johnson improperly issued the Order for items that did not constitute violations. Additionally, the Appellant submits that EO Johnson issued the Order in retaliation for Mr. Nick Chan making a complaint about his conduct.

[22] The Appellant seeks that the Order be rescinded, or varied to order a lesser remedy for only those items that constitute violations of the Act, Housing Regulation, and the MHHS.

[23] The Appellant called two witnesses:

- i. Maymee Lum, the Appellant’s Director, by video conference.
- ii. Nick Chan, the Appellant’s representative with regard to management of the Premises, by telephone.

Respondent’s Position

[24] The Respondent submits that EO Johnson acted reasonably and lawfully when he inspected the Premises and issued the Order, pursuant to the Act, the Housing Regulation, and the MHHS.

[25] Furthermore, the Respondent submits that many of the violations identified in the Order were critical and had existed for over three years prior to the date of the Order, and there is no justifiable reason to vary or reverse the Order.

[26] The Respondent seeks to have the Order confirmed.

[27] The Respondent called two witnesses:

- i. George Johnson, Executive Officer, AHS Public Health, by video conference.
- ii. Daria Romanish, Supervisor, AHS Public Health, by video conference.

Analysis

[28] The Appeal concerns the Appellant and Maymee Lum, who is the Director of the corporation that owns the Premises, which was the subject of the Order.

[29] In April 2022, the Calgary Catholic Immigration Society (the “CCIS”) were assisting newly arrived Canadians to move into Unit 5 of the Premises. At that time, Mr. Chan allegedly told the CCIS that the leak would be fixed during the summer of 2022. When the leak was not repaired within the alleged stated timeframe, the CCIS alerted AHS.

[30] The alleged violations of the Act, the Housing Regulation, and the MHHS, were reported to AHS by the CCIS on June 16, 2022.

[31] Following the CCIS alerting AHS, on June 17, 2022, EO Johnson conducted the June Inspection. At that time, the allegations of breaches of the Act, the Housing Regulation, and the MHHS included some of the following:

- i. The Premises’ roof had several active leaks and the tarp covering it had been used for several years to cover over damaged sections of the roof.
- ii. In Unit 5,
 - a. there were cracks and water damage on the living room wall and ceiling.
 - b. there was water damage on the bedroom ceiling.
 - c. there was water infiltrating into it at the time of inspection and being collected in buckets and a cooking pot.
 - d. the wall and ceiling around the north-facing living room window were water-damaged and saturated with moisture.
 - e. the vinyl floor in the kitchen and bathroom was lifting.
 - f. the moulding around the bathtub was cracked and moldy.

- iii. Windowpanes were missing from the west-facing main bedroom window and the office room window.
- iv. Among others.

[32] When preparing the June Inspection Report, EO Johnson discovered that in 2019 the Premises had been placed under the Safe Housing Inspection Program (“SHIP”), which tracks buildings and properties with a history of outstanding violations.

[33] The Order detailed numerous allegations of breaches of the Act, the Housing Regulation, and the MHHS. The Order directed various specified remedial and repair activities and included an order to vacate.

[34] The Premises had previously been subject to a series of four inspections between the dates of June 26, 2019 and March 5, 2020. Inspection reports had been prepared for each of the prior inspections. Some of what was present in the prior reports were violations that were similar or the same as those alleged during the June Inspection.

[35] On June 22, 2022, EO Johnson contacted Nick Chan by phone to discuss the alleged violations observed on June 17, 2022 and noted the prior history of non-compliance. Mr. Chan stated that the registered owner was allegedly awaiting financing to carry out the repairs.

[36] Following discussions with Mr. Chan, EO Johnson spoke with Daria Romanish, Coordinator, Safe Built Environments with AHS Environmental Public Health, Calgary Zone, to discuss the Premises. Based on a history of non-compliance, and a lack of diligence in performing necessary repairs, the decision was made to issue the Order for the Premises.

[37] In the afternoon of June 22, 2022, Ms. Romanish spoke with Mr. Chan by phone. During the discussion, Ms. Romanish informed Mr. Chan about the minimum requirements found in the Act, the Housing Regulation and the MHHS for premises that serve as rental accommodations.

[38] Also during this discussion, Ms. Romanish received a complaint from Mr. Chan alleging a lack of professionalism by EO Johnson when interacting with Mr. Chan. Specifically, Mr. Chan alleges that EO Johnson stated that if repairs could not be performed the Appellant could sell the building. Mr. Chan took umbrage.

[39] On June 23, 2022, AHS made the Appellant aware of the violations. Subsequently, the Order was issued in writing and it was received by the Appellant on June 24, 2022.

[40] The existing tenants in the Premises were able to find alternative accommodations by June 28, 2022.

[41] The Order directed:

1. That the occupants vacate the above noted premises on or before June 30, 2022.
2. That the Appellant immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:

- a. Hire a roofing contractor to replace the roof and provide documentation detailing all work completed to an Executive Officer of AHS.
 - b. Remove all water damaged material from the living room and bedroom wall and ceiling. Replace with new building materials and refinish the areas only after the roof has been repaired.
 - c. Repair or replace the oven so both elements are in proper working condition.
 - d. Repair or replace the flooring around the perimeter of the bathroom and kitchen.
 - e. Replace the caulking around the bathtub.
 - f. Replace missing windowpanes.
3. That until such time as the work referred to above is completed to the satisfaction of an Executive Officer of AHS; the above noted premises shall remain closed for tenant accommodation purposes.

Findings

[42] The Panel heard witness testimony from both the Appellant and the Respondent. As well, the Panel reviewed the parties' submissions and the disclosure. Concerning the disclosure, the Board viewed the photos of the Property during the June Inspection.

[43] Ms. Lum testified that she has owned the Premises since 1992. She further testified that her son, Mr. Chan, is involved with managing the Premises. Mr. Chan confirmed that he was involved with managing the Premises since 2018.

[44] Mr. Chan testified that he made the tenants who moved into Unit 5 aware of the leaks before they signed the lease and moved into Unit 5. He further acknowledged that the roof required repair for its leaks since June 26, 2019, during three different tenancies, and that repairing the roof was critical.

[45] Mr. Chan testified that he had received a number of quotes for the roof repairs and by July 2020, he had received more than five different quotes. He said that tarps were placed on the roof to stem the leaking, further, that he was waiting for a loan to complete the roof repairs and a bucket was being used to collect water leaking into Unit 5. He stated that it was unusually rainy in Calgary and used words to the effect that the roof only leaks when it rains.

[46] Mr. Chan testified about his interaction with EO Johnson during the June Inspection, saying that EO Johnson was rude by saying that the Appellant should sell the Premises if they cannot afford to fix the roof.

[47] EO Johnson also testified about his interaction with Mr. Chan during the June Inspection. EO Johnson testified that when he conducted the June Inspection it was raining and there was water pouring into Unit 5 and other areas within the Premises. EO Johnson testified that Mr. Chan took umbrage to use of the words "water pouring in" and refused to say when the roof would be fixed.

[48] EO Johnson testified that during the interaction with Mr. Chan, he deduced that money was an issue with regard to fixing the roof. At the time of the June Inspection, he was not aware of any previous AHS inspections and purposely did not inquire so as to remain unbiased. During his testimony, he referenced many of the photos he took of the Premises' state of requiring repair.

[49] Following the June Inspection, when completing the June Inspection Report, EO Johnson testified that this when he became aware of the previous AHS orders requiring repair of the Premises, including the leaking roof.

[50] EO Johnson contacted by phone the AHS Executive Officer who had issued the previous orders and who confirmed that he made Mr. Chan aware of the orders and repairs required.

[51] EO Johnson testified that he spoke with his supervisor, Ms. Romanish, about the Appellant's non-compliance with past AHS orders and a lack of willingness by Mr. Chan to provide a timeline for the roof repair. Based on the information of non-compliance with past AHS orders, a decision was made to issue the Order, which EO Johnson communicated to Mr. Chan by phone.

[52] Following the June Inspection Mr. Chan spoke with EO Johnson's supervisor, Ms. Romanish, about EO Johnson's behaviour during the June Inspection. Ms. Romanish testified that the decision to issue the Order was a joint decision, based upon the information provided by EO Johnson.

[53] Additionally, during the conversation, Mr. Chan complained about what he felt was EO Johnson's rude behaviour, making statements such as the Appellant could sell the Premises. Ms. Romanish testified that she apologized for the behaviour, and explained the role of AHS and its Executive Officers is to protect the public.

[54] Ms. Romanish testified that generally AHS uses a progressive approach when issuing orders in the case of landlords to achieve compliance with the Act, the Housing Regulation and the MHHS. In other words, for example, where possible AHS attempts to provide a reasonable amount of time for a landlord to address violations and not simply issue an order to vacate unless a violation is critical in nature. In the case of the Appellant and the Premises, where there was a history of ongoing lack of compliance, she believed that the opportunity for progressive compliance was exhausted.

Conclusion

[55] Having regard to all the information before the Panel, including the evidence and submissions, and in particular, all the witnesses' testimony, the Panel finds that:

- i. The state of the Premises, and in particular Unit 5, were in violation of the Act, the Housing Regulation and the MHHS.
- ii. The Appellant's representative, Mr. Chan, acknowledged that he saw the June 16, 2019 inspection report for the Premises, which included the roof repair as being critical, and agreed that the roof leak existed since that time.

- iii. AHS and its employees were thorough and diligent in carrying out the June Inspection and acted at all times fairly and patiently in their dealings with the Appellant's representative, Mr. Chan.
- iv. The Appellant had a history of non-compliance for some of the repairs outlined in the Order that were critical in nature, such as the roof leak, which were identified by AHS to the Appellant on June 26, 2019.
- v. AHS is generally progressive when issuing orders in the case of landlords to achieve compliance with the Act, the Housing Regulation and the MHHS. However, in the Appeal before the Panel and in the case of the Appellant and the Premises, given the length of time since the existence of the roof leak during three different tenancies, and the Appellant's representative, Mr. Chan, being aware that the repair was critical, the opportunity for progressive compliance was exhausted.
- vi. AHS acted reasonably having regard to the circumstances at the time of issuing the Order.

[56] Based on the above, the Order is confirmed.

[57] The 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: February 17, 2023