

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 STAY APPLICATION TO
THE CHAIR OF THE PUBLIC HEALTH APPEAL BOARD
BY MICHAEL MARTIN
OF THE ORDERS OF AN EXECUTIVE OFFICER
ISSUED BY ALBERTA HEALTH SERVICES
ZONE 4 EDMONTON
DATED JULY 20 AND 21, 2016
HEARING HELD ON SEPTEMBER 14, 2016

Appearances

Michael Martin, Owner/Appellant

Mark Raven-Jackson, Legal Counsel, Alberta Health Services/Respondent
Eleanor Lee, Executive Officer, Alberta Health Services/Respondent

Board's Decision

The Board decided to confirm the Orders dated July 20 and 21, 2016 regarding the property located at 10838 74 Avenue NW Edmonton, Alberta ("Property").

Timing of the Appeal

The Appellant, Michael Martin, received the Orders via email on August 9, 2016. The Appellant filed a Notice of Appeal on August 15, 2016. The Notice of Appeal is attached to this Decision as Appendix "B" and was Exhibit 2. The Notice of Appeal was received within 10 days of the Appellant receiving the Orders via email. There was no objection from Alberta Health Services to the Board hearing the appeal.

Jurisdiction

There were no objections to the Board's jurisdiction to hear the appeal.

Introduction

Six Orders were issued by an Executive Officer, one on July 20, 2016 and five on July 21, 2016 (the "Orders") regarding the Property. The Orders are attached to this Decision as Appendix "A" and were Exhibit 1. The Property was built in 1929 as a single family residence and was converted into a rooming house with nine rooms rented individually with a shared kitchen and bathroom. The July 20, 2016 Order set out contraventions in

the common areas of the Property and the five Orders dated July 21, 2016 set out the contraventions found in five individual rooms, two upstairs rooms and three basement rooms. The five Orders regarding the individual rooms required the occupants to vacate the premises by August 31, 2016.

The Appellant, Michael Martin, is the registered owner of the Property. He leases the Property to Matthew Peters (the "Property Manager"), who manages the Property and rents the rooms to individuals.

A partial Stay of the Orders was granted by way of a consent order issued by the Chair of the Board on August 31, 2016. The parties had agreed to the terms of the Stay which were that remediation of the headroom clearance violations and the orders to vacate were stayed and all other remediation required in the Orders were to be attended to by the Appellant.

Issue

Whether the Orders ought to be varied to allow the four rooms with low headroom clearance to be occupied.

Appellant's Submissions

The Appellant did not refute the findings set out in the Order. He requested an exemption regarding altering the headroom clearance in areas where he believed the house roof would need to be raised or the house raised to increase the basement height to bring it to the required standards. He stated he could alter the stairway to the upstairs and the basement to increase the headroom but requested an exemption for the other areas. He asked the Board to "grandfather" the low headroom clearance so that the four rooms could continue to be rented and occupied.

The sections of the Orders the Appellant appealed were as follows:

Order #1 - Order of an Executive Officer dated July 20, 2016

Ensure the headroom clearance leading to the upper level, in all bedrooms and entries into the bedroom is more than 72 inches. In areas where this cannot be achieved the space is not to be used for purposes other than for storage.

Order #2 - Order of an Executive Officer Closed for Tenant Accommodation Purposes Order to Vacate - Upstairs South Suite 10838-74 Avenue NW Edmonton dated July 21, 2016

Headroom clearance of the doorway into the suite was too low at 69.5 inches.

Order #3 - Order of an Executive Officer Closed for Tenant Accommodation Purposes Order to Vacate Upstairs North Suite 10838-74 Avenue NW Edmonton dated July 21, 2016

Did not appeal any items.

Order #4 - Order of an Executive Officer Closed for Tenant Accommodation Purposes Order to Vacate Basement South Suite 10838-74 Avenue NW Edmonton dated July 21, 2016

Headroom clearances at doorways of basement suites was too low at 70 inches. Ducting outside the basement bedrooms posed low headroom clearance of 68 inches.*

The suite had a low headroom clearance of 71 inches.

*Appellant advised the Board he could increase the headroom clearance under the ducting by 2 inches.

Order #5 - Order of an Executive Officer Closed for Tenant Accommodation Purposes Order to Vacate Basement North Suite 10838-74 Avenue NW Edmonton dated July 21, 2016

Headroom clearance at the doorway was too low at 70 inches.

The ducting outside the room posed low headroom clearance of 68 inches.*

*Appellant advised the Board he could increase the headroom clearance under the ducting by 2 inches.

Order #6 - Order of an Executive Officer Closed for Tenant Accommodation Purposes Order to Vacate Basement East Suite 10838-74 Avenue NW Edmonton dated July 21, 2016

Headroom clearance at doorways leading into basement suites was too low at 70 inches.

Ducting outside the basement bedrooms posed low headroom clearance of 68 inches.*

*Appellant advised the Board he could increase the headroom clearance under the ducting by 2 inches.

The Appellant resided on the Property for ten years prior to leasing it to the Property Manager and during that time no one seriously hurt themselves as a result of the low headroom clearance. The most serious harm caused by the low headroom clearance

was a bump on the head. He planned to have his child live on the Property in the future when she attends university.

It was the Appellant's position that residents of the Property would be aware of the low headroom clearance and that would prevent harm. He also submitted he could make the low headroom more visible. He provided photographs of the doors to the upstairs rooms and also photographs of a low ceiling in a shopping centre parkade where the low headroom clearance was visibly marked with yellow and black stripes. They were Exhibit 3. He submitted if the parkade could have low headroom clearance with visible markings that ought to be permitted in the Property as well.

The Appellant also submitted there had been a previous inspection of the Property and provided, as part of Exhibit 3, a copy of a letter dated January 26, 2015 from Alberta Health Services that noted contraventions on the Property but did not include low headroom clearance. He had not been present during that inspection and did not know if the inspectors were aware the Property was a lodging house. He submitted it caused undue hardship when the rules changed.

The Appellant submitted that he was not notified of the contraventions in a timely fashion and only learned about the Orders long after they were issued. The Order of July 20, 2016 had tight time frames for completing the work required, some were required by July 22, others by July 27 and others by August 21, 2016. He submitted that was unfair and unreasonable.

Alberta Health Services' Submissions

Alberta Health Services provided a binder with evidence that included a Chronology of Events, the process of gaining entry onto the Property to complete the inspection, the Orders and photographs of the Property. This was Exhibit 4. A photograph of the house from the street was Exhibit 5 and a Guidance Document - Headroom Clearance was Exhibit 6.

Executive Officers use guidelines for headroom clearance contraventions and excerpts from that document are as follows:

Guidance Document Headroom Clearance dated November 23, 2010

Low headroom clearance, or low ceiling height, is a problem frequently encountered in older homes, especially single family dwellings converted for use as something other than originally intended (for example, a rooming house), or if an attic or basement area is converted into living space. A long-term occupant may be familiar with his surroundings, but visitors and first responders may not be aware of an obstruction.

Low headroom Clearance: many basements and basement areas, and even attic spaces, are modified for rental as a "suite", but there may be no modification of the ceilings or doorways in these areas.

6'5

Clearance Height will be at an acceptable standard of 6'5"

6'

A lower clearance height of 6 'may be permissible with good lighting conditions and demarcation of obstruction*

Less than 6'

Any area with ceiling height or "doorway" less than 6 feet will not be considered as living space. Ceiling heights and headroom clearance over stairs should ideally have a measurement of 6'5".

Existing suites with variable headroom clearance may be reviewed on a case-by-case basis, particularly those with low spots in locations where support beams or mechanical ducting cannot be altered. A lot will depend on the location of doorways and "paths of egress." For example, low ducting should not be present in a pathway leading to the stairs. In such an instance, it may be necessary to change the configuration of the living space or the ducted areas of the ceiling.

The headroom clearance in all four rooms the Appellant wanted exempted are all less than 6 feet. Alberta Health Services submitted the headroom clearance requirements are 7 feet and exceptions are some times permitted for headroom less than 6 feet 5 inches but there should not be exceptions for less than 6 feet (72 inches) because that puts the public at risk.

As all of the rooms were rented individually, this would be considered high risk living accommodations and egress is particularly important in these situations. In an emergency, smoke affects visibility and first responders, tenants and visitors could be harmed by the low headroom clearance. The potential harm was more serious than a bump on the head.

The Appellant and the Property Manager would not be at risk if the exemption was granted. It would be the tenants in the individual rooms, visitors and first responders. Counsel submitted it is not proper to grandfather violations that put the public at risk.

Counsel submitted that a shopping centre parkade with low headroom clearance and a room where people slept and ate was not comparable.

It was Alberta Health Services position that the Property could continue to be rented to tenants but the rooms with headroom clearance of less than 6 feet could not be occupied. There were two bedrooms on the main floor of the Property with sufficient headroom clearance.

In response to the Appellant's submission that he received late notice of the inspections and the Order, the Executive Officer stated she had assumed the Property Manager was the registered owner. She had been dealing with the Property Manager on other

properties he owned and was not advised until late in the process that he was not the registered owner of the Property. When she issued the Orders she completed a title search and mailed the Orders to the Appellant at the address shown on title. This address was incorrect.

Reasons

There was no dispute about the findings that resulted in the Orders being issued. However, the Appellant requested that some of the non-compliant headroom clearance contraventions be allowed to remain and the rooms occupied. All of the headroom clearance heights appealed by the Appellant were less than 6 feet. In the case of the areas with ducting, the headroom clearance could be increased by 2 inches but the headroom clearance would still be less than 6 feet after renovations were completed.

It was Alberta Health Services' evidence that headroom clearance requirements are 7 feet and exceptions are permitted for headroom clearance less than 6 feet 5 inches but there should not be exceptions for less than 6 feet (72 inches) because that puts the public at risk. The Board agrees with this position, particularly when the reduced headroom clearance is in a path of egress, which is the case with all the Orders regarding increased headroom clearance. The low headroom clearance puts tenants, visitors and first responders at risk. The risk of harm is more serious than a bump on the head if there is an emergency like a fire.

Visibly marking the low headroom clearance or adding extra light may assist in some situations with low headroom clearance but is not sufficient when the headroom clearance is less than 6 feet, the low heights are in the path of egress and there may be smoke affecting a person's visibility in an emergency.

Regarding the Appellant's submission that the Property was inspected in January 2015 and the headroom clearance contraventions were not identified at that time which is a change in rules that caused him undue hardship, the Board finds there was no evidence the rooms in the upstairs and basement were occupied at that time or that the inspectors were aware they were occupied. The Orders being appealed were issued because the individual rooms were occupied and they did not meet the requirements for headroom clearance; if that was missed in a prior inspection it does not change the standards that are required to keep tenants safe. It is the Appellant and the Property Manager's responsibility to know the requirements of the *Public Health Act*, *Housing Regulation* and *Minimum Housing Standards* and to ensure the Property meets those requirements.

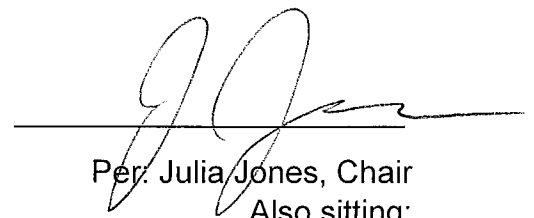
The Appellant submitted he was not notified of the contraventions in a timely fashion and only learned about the Orders two weeks after they were issued. The Executive Officer had been dealing with the Property Manager and was not advised that he was not the registered owner of the Property until late in the process. It may have been helpful if the Executive Officer had completed a title search earlier in the process to determine the legal

owner but it would also have been helpful if the Property Manager had contacted the Appellant to advise him of the concerns. It would also have been helpful if the Appellant had kept his address for service on title updated so that he would have received the Orders earlier. It was a combination of factors that resulted in the Appellant not having timely notice of the Orders.

Although the Appellant did receive notice of the Orders late, he did consent to a stay order that required him to attend to the required remediation, other than the low headroom clearance repairs. He therefore agreed with Alberta Health Services to do the work notwithstanding that the time frames had come and gone as set out in the Order. There was agreement between the parties about these matters therefore the Board will decline to make a finding regarding those time frames.

The Appellant submitted the Board's Decision is final for him and may prevent him for renting his Property. However, if the Appellant declines to make the repairs necessary to increase the headroom in the 5 rooms he can continue to rent the property by ensuring those rooms are not occupied. If he renovated the stairway to the upstairs, which he stated was possible, the Property would have three bedrooms that could be occupied.

For the above reasons, the Public Health Appeal Board has confirmed the Orders dated July 20 and 21, 2016.



Per: Julia Jones, Chair
Also sitting:
Sandra Sheppard, Vice-Chair
Ike Zacharopoulos, Member

Date: October 4, 2016