

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 NATHAN CHANG OF
THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY
ALBERTA HEALTH SERVICES ZONE 4, EDMONTON, ALBERTA
DATED May 29, 2018

DECISION OF THE BOARD

Date of Hearing

September 12, 2018

Sitting for the Public Health Appeal Board (the "Board"):

Denis Lefebvre, Chair
Wendy Lickacz
Ike Zacharopoulos
Barbara Rocchio

Appearing for the Appellant:

Nathan Chang, Owner
Terry Krasniuk, Manager

Appearing for Alberta Health Services ("AHS")

Linda Svob, Legal Counsel
Ingrid Bohac, AHS Executive Officer ("EO")
Meaghen Allen, AHS EO

Board Decision

[1] The Board varies the Order dated May 29, 2018, (the "Order").

Background/Facts

[2] The premises that are the subject matter of this Appeal are five (5) apartment complexes located in Edmonton and municipally described as:

- (a) 13850 – 27th Street;
- (b) 13854 – 27th Street;
- (c) 13858 – 27th Street;
- (d) 13862 – 27th Street; and
- (e) 13866 – 27th Street.

(Collectively referred to as the “Premises”)

[3] An AHS EO inspected the Premises on August 31, 2017 as part of a multi-agency inspection task force called Project Watch. The common area was inspected, as were several units where occupants granted access.

[4] The EO observed several violations of the *Minimal Housing and Health Standards* (the “MHHS”) and *Nuisance and General Sanitation Regulation* (the “Nuisance Regulation”) of the *Alberta Health Act*, R.S.A. c. P-37 (the “Act”). The violations included, among other things, pest infestation, faulty venting and electrical systems, filthy conditions, and furnaces that had failed City of Edmonton inspections.

[5] The EO conducted follow-up inspections of the Premises on the following dates:

- (a) October 12, 2017;
- (b) October 13, 2017;
- (c) January 8, 2018;
- (d) January 25, 2018;
- (e) February 6, 2018;
- (f) February 8, 2018;
- (g) February 14, 2018;
- (h) March 6, 2018;
- (i) April 11, 2018;
- (j) April 1, 2018;
- (k) May 14, 2018; and
- (l) May 16, 2018.

[6] Following each of the above noted inspections, the EO found violations of the MHHS and the Nuisance Regulation. The said violations were communicated to the Owner and resulted in eleven (11) EO orders, which also included closures for tenant occupation. None of those orders are the subject of this Appeal.

[7] On May 14 and 16, 2018, an EO conducted inspections of the Premises. (The inspections dated May 14 and 16, 2018 are collectively referred to as the “Inspections”).

[8] The Inspections revealed extensive violations of the MHHS and the Nuisance Regulation, including, but no limited to, pest infestations, unsanitary conditions, faulty electrical systems and faulty furnaces.

[9] On May 29, 2018, the EO issued an order (the “Order”), which is the subject matter of this Appeal.

[10] The Order states as follows (as quoted from the Order):

1. That the owner immediately and diligently pursue the completion of the following work in and about the above-noted premises, namely:
 - a. Hire a licensed Pest Control Operator to inspect and treat **all suites and common areas** for bedbugs and cockroaches as required by the licensed pest control operator. *Provide copies of pest control reports to this office.*
 - b. Implement an integrated pest control management program (IPM). This is to include the chemical and physical pest control treatment as required by the licensed pest control operator. IPM is to include continual monitoring and pesticide treatment until all present pests have been eradicated.
 - c. Ensure that continual monitoring as required by the licensed pest control operator be initiated for any future pest.
 - d. Ensure the building owner(s), property managers, and occupants/tenants work together to discourage any pest infestation and/or nesting by employing a number of control methods and by performing continual building maintenance in areas of concern. All parties are advised to work with and adhere to any prescribed actions from the exterminator (pest control company) contracted to service the building, and to consider a combination of physical control measure consistent with an Integrated Pest Management program (IPM).
 - e. Hire a qualified plumber that is licensed to inspect gas-fired appliance to conduct a full inspection of all gas fired appliances. The inspection must include the furnace, all components of the furnace, hot water tank and all venting stacks as per the HVAC Safety Codes Officer with the City of Edmonton (COE). HVAC Permits will be required for those units that have not been permitted and inspected. Once all the work has been completed and inspected by the COE, a complete report from the COE indicating that the gas

fired appliances have been properly and safely installed must be provided to this office.

- f. A full inspection for the furnaces located in the hallways of building 13862 and 13866 is required. HVAC permits will be required for these two units as the gas lines must be tested before the gas can be restored and the furnaces certified for use. Once all work has been completed and inspected by the COE, a complete report from COE indicating that all required repairs have been completed must be provided to this office.
- g. All other furnaces must be checked by the qualified contractor as being safe for use as per the request from the COE. A complete report from the contractor must be completed and submitted to this office.
- h. Due to the numerous electrical code violations noted by the electrical SCO with the COE within the complex, a full electrical inspection is required for the entire premises by a licensed master electrician. An electrical permit for the required work is required. Once all the work has been completed and inspected by the COE, [a] complete electrical report from COE indicating that all required repairs have been completed must be provided to this office.
- i. The owner is to hire a cleaner that will maintain the common areas in and around the entire complex. Cleaning must be completed on all buildings on a weekly basis or as needed to ensure common areas are maintained in a sanitary manner.

2. The work referred to in paragraph 1 shall be completed by July 15, 2018.

[11] The Order further stipulated that until the Order is fully complied with, no vacant suites in the Premises are to be rented/occupied.

[12] On June 3, 2018, AHS sent a letter to the Owner requesting he attend a compliance review meeting on June 22, 2018.

[13] The Owner attended the compliance review meeting on June 22, 2018. AHS sent the Owner a summary letter of the matters that were discussed and the commitments the Owner gave to bring the Premises into compliance with the Act, the MHHS and the Nuisance Regulation.

[14] On June 29, 2018, July 27, 2018 and August 29, 2018, follow-up inspections were conducted by AHS. After those inspections, the Order remained in force.

Timing of the Appeal

[15] Section 5(3) of the *Public Health Act* (the “Act”) requires that the Appellant serve the Notice of Appeal within 10 days after receiving the Order.

[16] The Order was served on May 29, 2018. The PHAB Secretariat received the Notice of Appeal on June 8, 2018. The Notice of Appeal was therefore received on time.

Jurisdiction

[17] There are no objections to the Board's jurisdiction to hear the Appeal.

Documents/Exhibits

[18] The following documents were entered as exhibits:

- (a) **Exhibit 1:** Copy of the Order
- (b) **Exhibit 2:** Copy of the Notice of Appeal
- (c) **Exhibit 3:** Duo tang containing documents of the Appellant (Red)
- (d) **Exhibit 4:** Duo tang containing documents of the Appellant (Black)
- (e) **Exhibit 5:** Binder containing documents and submissions of the Respondent
- (f) **Exhibit 6:** Spreadsheet of Permits and Status and Legislation – City of Edmonton Safety Codes Officer

Legal Issues

[19] Based on the materials before the Board, the legal issues for consideration are as follows:

- (a) Whether the EO exceeded his/her authority when ordering all suites and common areas (in all buildings) to be treated for bed bugs and cockroaches when a complaint from a tenant only came from the building at 13858-27 Street.
- (b) Whether the furnaces should be inspected by a qualified service provider despite having been inspected and certified by the City of Edmonton in 2015.
- (c) Whether the Owner is required to heat the Common Areas of the Building at 13862-27 Street and 13866-47 Street Edmonton.
- (d) Whether the EO exceed his/her authority by requiring the Owner to have a full electrical inspection by the City of Edmonton.
- (e) Whether the nuisances found by the EO are serious enough to prohibit all vacant suites from being rented until the Owner fully complies with the Order.
- (f) Whether the EO exceeded his/her authority by ordering the requirements for the heating, ventilation and air conditioning (“HVAC”) and electrical permits.

Submissions of the Appellant

[20] The Appellant was contacted by Project Watch and learned that the building manager was allegedly allowing gang members to reside in the Premises. The gang members were allegedly involved in prostitution and drug trafficking. Many of the residents in the Premises complained to

the police. On or about October 12, 2017, the Appellant was asked to attend an inspection by the Project Watch team, which included members of the Edmonton Police Service, the Edmonton Fire Department, the City of Edmonton Safety Codes Officers, and Alberta Health Services (“AHS”). As a result of that inspection the Appellant was provided with a list of items that he needed to tend to, chief among them was the immediate eviction of those gang members. To ensure that no more undesirable persons would move into the Premises, the Appellant suspended rental of vacant units until he completed the eviction of the tenants reportedly associated with the criminal gangs.

[21] On or about December 20, 2017, the Appellant started the process of recruiting a new building manager. Once the new manager was hired and the last of the troublesome tenants were evicted, the Appellant commenced reparation of damage caused by the evicted tenants. He also focused on repairs as identified by AHS.

[22] On or about March 1, 2018, the Appellant recruited a group of 4 to 5 people to catch up on the maintenance of the Premises. Once repairs were completed, he was intent on putting those vacated units back on the rental market.

[23] Following those repairs, the Appellant states that he scheduled several inspections with AHS to “clear the items on the [AHS] deficiency list accumulated during the Project Watch inspections.” The Appellant also submits that he had no objection to the closure orders by AHS for units that were damaged by the evicted tenants, as he was not planning on renting those units until the repairs were completed in any event.

[24] The Appellant argues that, since the complaint regarding bedbugs and cockroaches was only received from the tenants in one building (13858-27 Street), the requirement to inspect and treat the Premises exceed the standards laid out under s. 16 of the MHHS. He further submits that the said inspection and treatment are an intrusion on the tenants who have kept their respective unit clear of pests. As such, an inspection and treatment should, in the Appellant’s view, only be limited to those units where the occupants have complained.

[25] With respect to common area heating, the Appellant submits that the MHHS does not require the maintenance of the common areas heating system. That is, heating is only required for habitable rooms. As such the Appellant requests that Order be amended by deleting any reference to the common area heating in buildings 13862 and 13866 – 27 Street.

[26] With respect to the electrical infractions, the Appellant argues the EO exceeded her authority by requiring a full electrical inspection by the City of Edmonton. He submits that all outlets switches and fixtures are in proper working order and in compliance with the MHHS. He further submits that EO exceeded her authority by ordering that the Appellant obtain permits for the electrical work.

[27] The Appellant explained that he accompanied the electrical Safety Codes Officer when the Premises were inspected. He submits that the only issue noted during the inspection was the fact that the Appellant would require a permit with respect to the installation of power feeds for portable heaters to each unit during winter months when a unit is vacant. The Appellant stated that the Safety Codes Officer informed him that he would need one permit for each of the Premises’ buildings. However, when the Appellant’s electrician attended at City Hall to purchase

the permits, he was informed that a permit would be required for each unit – that is, 60 permits for the Premises. The Appellant argues that since no material changes were made to the suites' electrical systems, a permit of each unit is not required under the *Safety Codes Act*.

[28] In his final submissions, the Appellant argues that AHS must prove the existence of a nuisance in order to issue an order. He argues that the issues raised in the Order, specifically the presence of cockroaches and bedbugs in a couple of occupied units, the failure to have the furnaces inspected (which have been functioning properly) and the installation of heating power plugs in each unit from the buildings' breaker panel some 10 to 15 years ago, do not either individually or collectively constitute a nuisance as defined in the Act, which would require the vacant suite to remain so until the Order has been fully complied with. All in all, the Appellant submits that there are no grounds for an order under s. 62 of the Act.

Submissions of the Respondent

[29] The EO conducted inspections of the Premises on May 14 and May 16, 2018. She found extensive violations of the MHHS and the General Sanitation Regulation (the "Nuisance Regulation") throughout the Premises, including vermin infestations, unsanitary and filthy conditions, electrical problems and furnaces that have failed inspections by the City of Edmonton. In support of these findings, AHS has provided the EO's inspection reports as well as photographs taken during the inspection. These are found at Tabs 6 and 7 of Exhibit 5.

[30] The Respondent argues that if the Order is not complied with, the conditions of the Premises might become injurious to the public health or may hinder the prevention or suppression of disease, including, but not limited to:

- (a) Disease carried by vermin and transmitted to humans;
- (b) Gas leaks that can cause illness, death, and lead to fires;
- (c) Improper heating can cause pipes to burst; and
- (d) Electrical shocks that can cause bodily injury and result in death.

[31] The Respondent further argues that since the EO does not have the technical expertise to fully inspect electrical, gas and furnace issues, she would rely on the reports from those who have such expertise and qualification, such as Safety Codes Officers.

[32] On June 22, 2018, the Appellant attended a compliance review meeting. A summary of this meeting was sent to the Appellant to clarify what was required and to receive updates on work being performed. As at that date, the Order was still in force.

[33] Per section 11 of the MHHS, "Every housing premises shall be supplied with electrical service. Outlets, switches and fixtures shall be properly installed and shall be maintained in a good and safe working condition." The EO, it is argued, has the discretion to seek independent confirmation of what constitutes proper installation and "good and safe working condition." The Respondent submits that such discretion can include the requirements for a municipal safety codes electrical inspection report.

[34] The Respondent submits that the Order is supported by the EO's findings following the inspections of May 14 and May 18, 2018 and, accordingly, should be confirmed by the Board.

Analysis and Reasons

[35] The term "nuisance" is defined in the Act at s. 1(ee), which states:

(ee) "nuisance" means a condition that is or that might become injurious or dangerous to the public health or that might hinder in any manner the prevention or suppression of disease.

[36] The Appellant is incorrect when he argues that AHS must prove that a nuisance exists. The word "might" means that AHS has some discretion to determine, based on the information and evidence gathered during its inspection, whether a nuisance may be present. In many circumstances, only a proper inspection by a qualified person could determine the presence of a nuisance.

Whether the EO exceeded her authority when ordering the Premises to be inspected and be treated for bed bugs and cockroaches

[37] The EO explained that bed bugs and cockroaches in one area of a building means that it is likely that bed bugs and cockroaches may be found in other areas of a building. It was also noted that many of the Premises' buildings are interconnected (see Tab 3 of Exhibit 5). Given this likelihood, the EO has determined that a nuisance might be present beyond the units inspected, thus the requirement for an inspection from qualified pest control personnel of other parts of the Premises. The Board is satisfied, based on the evidence presented, that the EO did not exceed her authority when ordering that the Premises be inspected and treated.

Whether the furnaces should be inspected by a qualified service provider despite having been inspected and certified by the City of Edmonton in 2015

[38] The Appellant argues that an inspection of the Premises' furnaces is not necessary since they had been certified by the City of Edmonton in 2015. The Board cannot accept this argument.

[39] A malfunctioning furnace can be catastrophic. As presented by the EO, CO₂ poisoning can be fatal. As such, furnaces do need periodic maintenance in order to ensure they function properly and/or minimize the risk of malfunction. The Board also heard testimony that some of the furnaces did not have permit stickers (see Tab 6 of Exhibit 5). While this, in and of itself, does not prove the presence of a nuisance, the EO has correctly (or at least reasonably) ascertained that an incorrectly installed furnace may be a condition that might become dangerous to the public health. Accordingly, the Board finds that, since the older furnaces have not been inspected since 2015 and since new furnaces did not have permit stickers, the EO was justified in ordering an inspection of all furnaces in the Premises.

Whether the Owner is required to heat the common areas of the buildings at 13862-27 Street and 13866-27 Street Edmonton

[40] The Appellant is correct that he is not required to heat the common areas of the buildings.

[41] Article 8 (a) of the MHHS states as follows:

- (a) All heating facilities within a housing premises are to be properly installed and maintained in good working condition, and be capable of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms within the building to a temperature of ;
 - (i) at least 22°C(71°F), or
 - (i) maintained at a temperature of at least 22°C(71°F) when the control of the supplied heat in a dwelling is the responsibility of a person other than the occupant.

[42] The term “habitable rooms” is defined in Part II the MHHS to mean “a room that is intended to be used for sleeping, living, cooking or eating purposes but does not include a lobby, hallway, closet, toilet room, bathroom, corridor, laundry or storage space.

[43] However, the issue here is not whether the Owner is required to heat the common areas. The Order required furnaces in the common area to be inspected for the same reasons that he furnaces in the units need to be inspected. While the Appellant, as the Owner of the Premises, may not intend to use the hallway furnaces to heat the common areas of the buildings at 13862 and 13866 - 27 Street, so long as those furnaces are connected to a power supply and live gas line, and are capable of being used, they must be kept in proper working order. Accordingly, the Board finds that the EO is justified in ordering an inspection of those furnaces.

Whether the EO exceeded her authority by requiring the Owner to have a full electrical inspection by the City of Edmonton.

[44] The EO testified that she found numerous electrical infractions. Based on her testimony and evidence provided, the Board finds that the EO was justified in requiring the Owner to have a full electrical inspection by the City of Edmonton. As such, she did not exceed her authority under the Act.

Whether the nuisances found by the EO are serious enough to prohibit all vacant suites from being rented until the Owner fully complies with the Order.

[45] Since August 2017, the Premises are part of Project Watch, which is a multi-agency inspection group. The Premises has gone through multiple inspections and at least two (2) compliance meetings. Following the Order, the EO conducted follow-up inspections on June 29, July 27 and August 29, 2018. The EO testified that while some work had been conducted, violations of the MHHS and Nuisance Regulations remain and, in fact, new violations were found. Given the ongoing issues and the numerous infractions, the Board finds that the nuisances are serious enough as to prohibit any vacant suites from being rented until the Order is fully complied with.

[46] The Board also finds that there is a real concern that the work needed to bring the Premises in compliance with the Act, the Regulations and the MHHS will continue to drag on in perpetuity. Therefore, it is reasonable for AHS to create an incentive for the Owner to tend to the work per the Order in a timely manner.

Whether the EO exceeded her authority by ordering the requirements for HVAC and electrical permits

[47] It is certainly within the EO's authority to order inspections by those who are experts in a given field. That is to say, if the EO has reason to believe that a furnace may require an inspection, he/she may order an Owner to have an appropriate Safety Codes Officer conduct that inspection. However, the EO does not have the authority to issue an order that requires the Owner to obtain HVAC and electrical permits.

[48] HVAC and electrical permits fall within the purview of the *Safety Codes Act* and the bylaws of the City of Edmonton. An EO does not draw his or her authority from either the *Safety Codes Act* or the City of Edmonton bylaws, nor does the Act deal with permits. The Board therefore finds that the EO has exceeded her authority by ordering the Owner to obtain HVAC and electrical permits.

Conclusion

[49] After reviewing the evidence and submissions made by the Parties, and per the above analysis and reasons, the Board varies the Order as follows¹:

1. That the owner immediately undertake and diligently pursue the completion of the following work in and about the above-noted premises, namely:

...

- e. Hire a qualified plumber that is licensed to inspect gas-fired appliances to conduct a full inspection of all gas fired appliances. The inspection must include the furnace, all components of the furnace, hot water tank and all venting stacks as per the ^ Safety Codes Officer (the "SCO") with the City of Edmonton (the "COE"). ^ . Once all the work has been completed and inspected by the COE, a complete report from the COE indicating that the gas fired appliances have been properly and safely installed must be provided to this office.
- f. A full inspection for the furnaces located in the hallways of buildings 13862 and 13866 is required. ^ . Once all the work has been completed and inspected by the COE, a complete report from the COE indicating that all required repairs have been completed must be provided to this office.

...

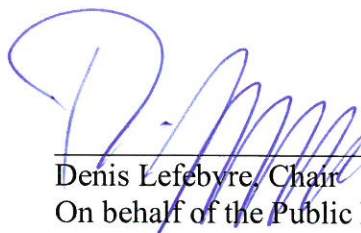
- h. Due to the numerous electrical code violations noted by the electrical SCO with the COE within the complex, a full electrical inspection is required for the entire premises by a licensed master electrician to identify any repairs required. ^ . Once all required repairs have been completed by a licensed master electrician and inspected by the COE, a complete electrical report

¹ The symbol ^ indicates text removed. Underlined portions indication added text.

from the COE indicating all required repairs have been completed must be provided to this office.

[50] The vagueness and apparent redundancy of sub-paragraph g. of paragraph 1 (page 3 of the Order) led the Board to question whether the Appellant understands what is required of him; it is certainly not clear to the Board. As such, pursuant to section 5(1)(5) of the *Public Health Act*, the Board directs AHS to reconsider this sub-paragraph and provide additional information that will inform the Appellant as to what the report of the contractor should contain to satisfy the request of the COE. The Board has directed that this be completed within 14 calendar days from the date of the Board's decision letter dated September 17, 2018. The Board has received notification from AHS that it has done so.

[51] The Order, as varied, shall remain in force until rescinded by AHS.



Denis Lefebyre, Chair
On behalf of the Public Health
Appeal Board

Date: January 15, 2019