

Appeal No.: 09-2022

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 WRITTEN ORDER OF AN EXECUTIVE OFFICER
ISSUED BY ALBERTA HEALTH SERVICES ZONE 3, DATED JULY 26, 2022**

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

BETWEEN:)	
)	
JAMES CRAIG MURRAY AND BRYAN)	
WILLIAM MURRAY)	Self-Represented
)	
Appellants)	
)	
-and-)	
)	
ALBERTA HEALTH SERVICES, ZONE 3)	
)	John Siddons
Respondent)	Alberta Health Services
)	
)	
)	
)	Stuart Chambers,
)	McLennan Ross LLP,
)	Independent Counsel for the Board
)	
)	
)	Heard via Video: September 1, 2022

DECISION

Introduction

- [1] On July 29, 2022, the Public Health Appeal Board (the “Board”) received from the Appellants a notice of appeal (the “Notice of Appeal”) requesting a stay of two orders of an Executive Officer of Alberta Health Services issued on July 26, 2022.
- [2] The first order was an Order to Vacate Units 2, 6, 8, 9, 16, and 19 at the housing premises located in Wainwright, Alberta and municipally described as 605 - 6 Avenue, (the “Property”) being Unfit for Human Habitation (“Order #1”).
- [3] The second order on the Property was Closed for Tenant Accommodation Purposes (“Order #2”).
- [4] The parties provided written submissions to the Public Health Appeal Board prior to the Appeal Hearing, and provided evidence and oral submissions at the Appeal Hearing.
- [5] The appeal hearing (the “Appeal Hearing”) occurred before a panel of the Public Health Appeal Board (the “Panel”) via videoconference on September 1, 2022.
- [6] On September 7, 2022, the Board issued by letter its decision to the Appellants and the Respondent. The Board confirmed both Order #1 and Order #2, with detailed written reasons to follow.

Background Summary

- [7] The Appellants, Mr. James Craig Murray and Mr. Bryan William Murray, are the registered owners of the Property. The Property is a former motel, which was converted to house tenants on a long-term basis.
- [8] On September 17, 2021, Alberta Health Services (“AHS”) received a complaint regarding the Property from a relative of a tenant in Unit 11, which raised concerns about a lack of proper heating, forcing the tenant to use a space heater, and that the unit’s front door could not be properly locked.
- [9] Later in September 2021, AHS conducted an inspection at the Property. AHS determined that the Property’s exterior was in a general state of disrepair and that there were a number of serious deficiencies in Unit 11, contrary to the AHS Minimum Housing and Health Standards.
- [10] On October 15, 2021, AHS attended the Property and conducted an inspection on most of the 19 suites (the “October Inspection”). The Appellant Craig Murray was present for this inspection. This inspection revealed that many of the units were in a similar state of disrepair as Unit 11, including a number of critical deficiencies.
- [11] On November 2, 2021, AHS sent a summary of the October Inspection findings to the Appellant Craig Murray, who wrote back indicating that he intended to conduct repairs on the Property and requested an extension of 30 days for completing the high-priority items. The extension was granted to December 10, 2021.
- [12] Over the following months, AHS communicated with the Appellant Craig Murray about the status of the completion of the repairs.
- [13] On April 1, 2022, AHS followed-up on the repairs and was told by the Appellant Craig Murray that the first-round of repairs had been completed.
- [14] On July 20, 2022, AHS inspected the Property and determined that many of the previously identified deficiencies had either not been satisfactorily remedied or remedied at all.
- [15] On July 26, 2022, AHS issued to the Appellants Order #1 and Order #2.
- [16] On July 29, 2022, the Appellant provided the Notice of Appeal to the Board, requesting a stay of Order #1 and Order #2.

[17] On August 5, 2022, the Board wrote to the parties advising that it was issuing a partial stay of the Order #1 and Order #2 on the following conditions:

- i. A stay was granted for the current tenants of the currently occupied units;
- ii. No remaining units were to be occupied by new tenants, or former tenants who have chosen to relocate, pending the outcome of the appeal hearing;
- iii. Smoke detectors in the currently occupied units need to have batteries installed immediately and be maintained as fully functional; and
- iv. Emergency egress must be made available in each occupied unit subject to the stay (collectively, the "Conditions").

[18] On August 11, 2022, AHS conducted an inspection to verify whether the Appellants had complied with the Conditions of the partial stay. This inspection revealed that the Appellants had not complied with the Conditions of the partial stay. The partial stay of Order #1 and Order #2 was lifted, and the Town of Wainwright worked with AHS to re-house the existing tenants.

Timing of Appeal

[19] On July 26, 2022, AHS issued Order #1 and Order #2 to the Appellants. The Appellants' Notice of Appeal was received by the Board on July 29, 2022.

[20] Section 5(3) of the *Public Health Act* requires the Appellant to have served the Notice of Appeal in the prescribed form on the Board and AHS within 10 days after receipt of notice of the decision complained of.

[21] As the Notice of Appeal was received by the Board within the 10-day period from when Order #1 and Order #2 were issued, the Notice of Appeal was served on time.

Grounds of the Appeal

[22] The Appellants requested that Order #1 and Order #2 be stayed, based upon the grounds contained in the Notice of Appeal. The Board reviewed carefully the Notice of Appeal and determined that there are three big picture grounds of appeal.

- i. The findings of the Executive Officer are in error, and based on false or inaccurate findings, which can be broken down into five further specific allegations:
 - a) The grounds upon which the Orders were based were false or misstated, such that the Orders are without proper basis;
 - b) That considering the needs of the tenants for shelter, and the lack of reasonable alternate accommodation, less intrusive means should have been used to accommodate changes, if any, as may be required to remedy concerns by AHS Executive Officers;
 - c) That the Executive Officer made statements that suggest a reasonable apprehension of bias, such that the Orders may be based upon considerations other than those mandated by the *Public Health Act* and the Regulations;
 - d) That only 6 units were visited out of 19; and
 - e) That prior inspections with same issues, the tenants remained while the landlord finished work; the Executive Officer never came around to witness but only after year or years.
- ii. The Appellants argue that if a stay is not granted this will be a breach of s. 7 of the *Charter of Rights and Freedoms*, as the Orders will render the tenants homeless.
- iii. That in balancing the needs of the tenants and Appellants as against community interest, a stay should be granted based upon reasonable conditions as may be directed by the Board.

The Appeal Hearing

Procedural Issues

[23] Both the Appellants and the Respondent raised concerns about extensions for deadlines being granted and receiving ongoing disclosure up to the day before the Appeal Hearing. After discussion, the parties did not object to relying upon and presenting the disclosure.

[24] The Panel Chair explained the process for the Appeal Hearing.

Legal Issues

[25] The legal issues in the Appeal considered by the Board were:

- i. whether the grounds of appeal are within the Board's jurisdiction;
- ii. whether Order #1, Order to Vacate, should be confirmed, reversed or varied; and
- iii. whether Order #2, Closed for Tenant Accommodation, should be confirmed, reversed or varied.

[26] As to the first ground of appeal and its further five specific allegations, they concern the facts and evidence relied upon by the Executive Officer in rendering Order #1 and Order #2, and therefore are within the Board's jurisdiction. Allegations against the Executive Officer's motives have been raised in the sense that considerations outside of the *Public Health Act* were at play.

[27] Whether the considerations and findings of the Executive Officer were within the parameters of the *Public Health Act* is within the Board's jurisdiction. Whether the tenant closure part of Order #2 was warranted based on the findings of the Executive Officer is also within the Board's jurisdiction.

[28] As to the second ground of appeal, the Board is specifically omitted from the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, s. 2 and Schedule 1, and withdraws Charter jurisdiction from the scope of the Board's mandate. Therefore, the Board does not have jurisdiction to adjudicate on the constitutional issue of whether the appellants' *Charter of Rights and Freedoms* rights have been infringed.

[29] As to the third ground of appeal, this is more an argument in favour of the application for a stay, rather than a ground of appeal itself. This point does not specifically reference s.7 of the *Charter of Rights and Freedoms*, but is in keeping with the theme of balancing harm to the public and the rights of the Appellants. As the Appellants have sought a stay, the Board has the jurisdiction to deal with this request, which the Board did, in the normal course.

[30] Accordingly, the Board has the jurisdiction to hear the Appeal, specifically:

- i. That the findings of the Executive Officer were in error, and based on false or inaccurate findings, namely:
 - a) That the grounds upon which Order #1 and Order #2 were based were false or misstated, such that Order #1 and Order #2 were without proper basis;
 - b) That considering the need of the tenants for shelter, and the lack of reasonable alternate accommodation, less intrusive means should have been used to accommodate changes, if any, as may be required to remedy concerns by AHS;
 - c) That the Executive Officer made statements that suggest a reasonable apprehension of bias, such that Order #1 and Order #2 may be based upon considerations other than those mandated by the *Public Health Act*;
 - d) That only 6 units were visited out of 19;
 - e) That prior inspections with same issues, tenants remained while landlord finished work; and
 - f) That AHS never came around to inspect the Property but only after year or years.

Documents/Exhibits

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

- i. Exhibit A. Appellant disclosure and written submissions
- ii. Exhibit B. Appellant other documents – video, tenant agreement, two emails sent on September 1, 2022
- iii. Exhibit C. Respondent written submissions
- iv. Exhibit D. Respondent Disclosure

Summary of the Appellants' Position

[32] The Appellants state that they purchased the Property approximately 20 years ago and immediately renovated the inside and exterior, including shingles.

[33] The Appellants state that they have housed maybe 1000 people over the years, with always a solid nucleus averaging a stay of between 7 to 10 years, and have always fixed and repaired the Property while supplying a home and shelter for renters. They claim that they have had few complaints and solved them internally.

[34] The Appellants state that AHS only visited the Property a few times and never in the winter. When AHS required work to be done to the Property, they claim they completed the work quickly, except for the couple items that were impossible and grandfathered. Furthermore, they state that AHS would never come back to see if the work required to be done was completed.

[35] The Appellants state that during the year previous to Order #1 and Order #2 being issued, something changed with AHS Executive Officer Thor Hameister. They claim that he suggested they tear down the Property and build other accommodation for the tenants.

[36] The Appellants state that the Property is unique, with the suites being mainly one room units with a bathroom. Furthermore, they claim that with each suite being one room that you see what is happening all the time and in fact because the 19 units face each other, danger can be spotted easily, such as if there were a fire because the tenants would alert one another.

[37] The Appellants claim that the Property is not a danger to the public, but quite the opposite, and the problems are from the outside people. They further claim that the Town of Wainwright is using allegations that the Property needs repair as a pretext to demolish it.

[38] The Appellants provided testimony and called as witnesses:

- i. George Fast, maintenance worker for the Property;
- ii. Rodney Black;
- iii. Donna Devine, who was a tenant.

[39] George Fast testified about the various repair work that he had completed at the request of the Appellants since he moved into the Property in 2019. Mr. Fast also explained about the ongoing issue of damage to the Property caused by tenants, former tenants or other individuals who try to break into the units.

[40] Donna Devine stated that she had been a tenant for seven years and enjoys the convenience of the location for her medical needs and that she has made the Property her home. Ms. Devine confirmed that there have been instances of persons trying to break into the units and damaging the Property.

[41] Rodney Black testified that, over the last approximately 10 years, he has done much work at the Property including replacing shingles, replacing doors and windows, painting and other repairs.

Summary of Respondent's Position and Witnesses

[42] The Respondent states that at various points, the Property had been beset by numerous deficiencies, some of which can be categorized as critical. The most serious deficiencies include:

- i. Bedroom windows, which have been screwed shut in multiple units, not allowing for emergency egress (contravention of MHHS, s. 3(b)(i));
- ii. Absence of functional smoke alarms in multiple units (contravention of MHHS, s. 12);
- iii. Inadequate heating, leading to the use of convection heaters of questionable repair (contravention of MHHS, s. 8);
- iv. Broken exterior windows which do not lock (contravention of MHHS, s. 3(a)); and missing electrical cover-plates over outlets (contravention of MHHS, s. 11).

[43] The Respondent claims that despite the Property's deficiencies having been brought to the Appellants' attention beginning in September 2021, many of these deficiencies, some being critical, remained until July 2022.

[44] In July 2022, AHS issued to the Appellants Order #1 and Order #2 as the continued neglect of the deficiencies constituted a risk to the tenants at the Property, as well as to neighbouring properties and individuals.

[45] The Respondent called as witnesses:

- i. Thor Hameister – AHS Public Health Inspector/Executive Officer;
- ii. Zaheen Nanji – AHS Public Health Inspector and Manager/Executive Officer;
- iii. Scott Flett – Director Planning & Development Town of Wainwright.

[46] The witnesses' testimony confirmed the position of the Respondent, as all three witnesses had first hand knowledge of the state of the Property and its history.

Analysis

[47] The Appellants are the registered owners of the Property, which consists of 19 separate units, in a single-story structure in a u-shape, housing long-term tenants. The units are accessed directly from the exterior with the units' exterior doors opening directly to the outside.

[48] On September 17, 2021, AHS received a complaint regarding the Property from a relative of a tenant in Unit 11. This complaint raised concerns that the Property lacked proper heating, forcing the tenant to use a space heater, and that the unit's front door could not be properly locked (the "Initial Complaint").

[49] Following receipt of the Initial Complaint, on September 28, 2021, Mr. Thor Hameister, an AHS Executive Officer, attended the Property to assess the complaint. In addition to a general state of disrepair, the inspection of Unit 11 identified several deficiencies, the most serious of which consisted of the following:

- i. Non-functional smoke alarm, in contravention of the MHHS, s. 12; and
- ii. Broken front window, which was single-paned, in contravention of MHHS, s. 2(b)(i).

[50] Based upon the deficiencies identified in Unit 11, AHS determined that a further inspection of the entire Property would be required. An agreement was reached with the Appellants that the Property would be fully inspected on October 15, 2021.

[51] On October 15, 2021, Mr. Hameister re-attended the Property to conduct a further inspection (the "October 15 Inspection"). He was accompanied by AHS Environmental Public Health Manager Steven Probert. The Appellant Craig Murray was present for the October 15 Inspection, as well as George Fast, who was a former tenant at the Property who also served as its property manager.

[52] During the October 15 Inspection, most of the 19 suites were inspected, including all inhabited suites except for 3. These three units were left uninspected primarily because the tenants in those units refused to provide access.

[53] The October 15 Inspection revealed units in a similar state of disrepair as Unit 11, with a number of deficiencies, which Mr. Hameister documented as follows:

- i. Critical:
 - a) Bedroom windows which had been screwed shut in multiple units, not allowing for emergency egress, in contravention of MHHS, s. 3(b)(i).
 - b) Absence of functional smoke alarms in multiple units, in contravention of MHHS, s. 12.
 - c) Missing bathroom sink in a tenanted unit, in contravention of MHHS, s. 6(a) and (c).
 - d) Missing refrigerator in a tenanted unit (contravention of MHHS, s. 14(a)(iv).
 - e) Among others as detailed in Exhibit D.
- ii. Non-Critical:
 - a) Cover plates missing on electrical fixtures in multiple units, in contravention of MHHS, s. 11.
 - b) Inadequate heating in bathroom areas in multiple units (contravention of MHHS, s. 8(a) and (b)).
 - c) Broken/cracked windows, in contravention of MHHS, s. 2(b)(i).
 - d) Lack of double-glazed windows sufficient to protect against cold weather, in contravention of MHHS, s. 2(b)(ii).
 - e) Floor coverings in disrepair or missing, in contravention of MHHS, s. 5).
 - f) Bathrooms not equipped with ventilation, in contravention of MHHS, s. 7(c).
 - g) Exterior doors that were not properly sealed or weather-proofed, in contravention of MHHS, s. 2(b)(i).
 - h) Leak in waste pipe under the kitchen sink in a tenanted unit, in contravention of MHHS, s. 6(a) and (c).
 - i) Among others as detailed in Exhibit D.

[54] Also noted during the October 15 Inspection was the disrepair of the Property's exterior, including curling roof shingles and missing eaves trough on the exterior edge of the roofline.

[55] On November 5, 2021, Mr. Hameister sent to the Appellants a summary of the October 15 Inspection findings outlining the work that had to be completed in order to rectify the noted deficiencies so as to bring the entire Property in compliance with the MHHS.

[56] Mr. Hameister categorized the work to be done to rectify the noted deficiencies based on three different categories of urgency:

- i. High-priority, to be completed by November 2021.
- ii. Medium-priority to be completed by March 2022.
- iii. Low-priority, to be completed by May 2022.

[57] On November 10, 2021, the Appellant Craig Murray wrote to Mr. Hameister indicating that he intended to conduct repairs on the Property and that he had made arrangements to put in smoke alarms, weather proofing and electrical covers. Mr. Murray requested an extension of 30 days for completing the high-priority items. This extension was granted to December 10, 2021.

[58] On December 14, 2021, Mr. Hameister emailed Mr. Craig Murray requesting an update. Mr. Murray responded the following day indicating that the Property Manager had completed the first round of repairs. On December 17, 2021, Mr. Hameister wrote back to Mr. Murray requesting documentation or pictures of

the repairs. Later that day, Mr. Murray replied back indicating that he was in the Dominican Republic until February 28, 2022, and that the Property Manager had receipts of repairs. No receipts were provided to Mr. Hameister at that time.

[59] On April 1, 2022, Mr. Hameister called Mr. Craig Murray to follow-up on the repairs to the Property. At that time, Mr. Murray stated that a sale of the Property was being arranged and surmised that the buyer would likely be demolishing the complex. Mr. Murray further stated that the first-round of repairs had been completed, including installation of smoke alarms, weatherproofing of doors, ensuring some adequate heating facilities and some plumbing repairs. During this call, Mr. Hameister agreed to extend the deadline for high-priority repairs to May 2022.

[60] Later in the day on April 1, 2022, Mr. Hameister attended the Property to conduct a further inspection (the "April 1 Inspection") to inspect the exterior of the premises. The April 1 Inspection revealed that the roof remained in substantially the same condition as observed during the October 15 Inspection. In addition, many of the windows around the exterior still remained broken and in disrepair.

[61] Despite attempts to co-ordinate a further inspection date with the Appellants so that the Appellants could attend the inspection, no agreement was reached. As the parties could not come to an agreement as to when the inspection could take place, an inspection proceeded on July 20, 2022 (the "July 20 Inspection"). This inspection was a joint inspection, which included Mr. Hameister and Mr. Probert on behalf of AHS, alongside representatives for Building Codes, the Wainwright Fire Chief, and the RCMP.

[62] The July 20 Inspection included inspecting 6 units consisting of 5 of the 9 then occupied suites, as well as one unoccupied suite. The deficiencies which AHS had noted in its prior inspections remained outstanding including the critical deficiencies which had been identified as high-priority.

[63] On July 26, 2022, a fire was started in unit 11 of the Property. The Town of Wainwright's Fire Chief advised AHS that witnesses attempted to extinguish the fire using fire extinguishers located outside, but these were non-functional. First responders then attended the scene and extinguished the fire.

[64] On July 26, 2022, an AHS Executive Officer issued Order #1 and Order #2.

[65] On July 29, 2022, the Appellants provided a Notice of Appeal to the Public Health Appeal Board, requesting a stay of Order #1 and Order #2.

[66] On August 5, 2022, the Board wrote to the parties advising that it was issuing a partial stay of the Order #1 and Order #2 on the following conditions:

- i. A stay was granted for the current tenants of the currently occupied units;
- ii. No remaining units were to be occupied by new tenants, or former tenants who have chosen to relocate, pending the outcome of the appeal hearing;
- iii. Smoke detectors in the currently occupied units need to immediately have batteries installed and be maintained as fully functional; and
- iv. Emergency egress must be made available in each occupied unit subject to the stay.

(collectively, the "Conditions").

[67] On August 11, 2022 (the "August 11 Inspection"), an inspection was conducted to determine whether the Appellants had complied with the Board's Conditions for the stay. The August 11 Inspection was attended by the following:

- i. Zaheen Nanji, AHS Public Health Inspector and Manager/Executive Officer;
- ii. Scott Flett, Director of Planning & Development, Town of Wainwright; and
- iii. Jeff Graham, Wainwright Bylaws Officer.

[68] The following deficiencies were determined in breach of the Board's Conditions:

- i. Unit 9 was missing a smoke alarm;
- ii. While the tenant in Unit 4 did not provide access for inspection, they did verbally state that they were given a functional smoke alarm by the Property Manager 4-5 months ago, but that it was not installed; and

- iii. The bedroom window in Unit 19 was bolted shut and could not be opened (as had been noted in prior inspections).

[69] The Town of Wainwright worked with AHS to re-house the existing tenants.

Findings

[70] The Board heard witness testimony from both the Appellants 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 various inspections, which were referenced during the testimony of Mr. Hameister.

[71] The deficiencies documented by AHS during the different inspections were always provided to the Appellants in a timely manner. However, despite the passage of approximately 10 months, the Appellants had not made any appreciable improvements to the Property, and most of the deficiencies remained outstanding, which include a number identified as high-priority.

[72] Mr. Hameister testified that the repairs being attempted were haphazard piecemeal solutions. AHS Public Health Inspector and Manager/Executive Officer Zaheen Nanji testified that the Property was dilapidated and unsafe for the tenants that were living there.

[73] The Appellants were given several opportunities to address the deficiencies, and most of them were not addressed over the course of five separate inspections. The Appellants have not provided any compelling reason accounting for this delay, nor have they complied with the Board's Conditions.

[74] In the Appellants' Notice of Appeal, they raised broad and unsubstantiated allegations that Mr. Hameister was biased against them, which they underscored in their submissions to the Panel. When the Appellants cross-examined Mr. Hameister, they asked a number of questions that were irrelevant to the Appeal.

[75] The Panel does not find any bias against the Appellants by Mr. Hameister. His testimony was forthright and measured. The Appellants' testimony was the contrary.

[76] The Appellants' testimony implied that they are selfless and virtuous by providing housing that is affordable for tenants that require only basic accommodations, some of whom were satisfied to live in unsafe conditions.

[77] The Board remarks that it is neither for the tenants nor the Appellants to decide what are acceptable minimal standards, but rather society, as embodied by the MHHS.

[78] The Appellants claimed to have spent money on repairs, yet offered no substantiating receipts or photos. In fact, when AHS carried out inspections subsequent to assurances that work had been completed, this was not the case. This has been corroborated by other regulatory bodies. Accordingly, AHS issued Order #1 and Order #2.

[79] The Appellants sought a stay of Order #1 and Order #2. The Board granted a partial stay with Conditions for deficiencies to be remedied as mentioned herein. The Appellants failed to comply with the Conditions. Thus, the entirety of Order #1 and Order #2 went into full force and effect.

Conclusion

[80] Pursuant to section 5(11) of the *Public Health Act*.

[T]he 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.

[81] Accordingly, in the Appeal, the Board must decide whether to confirm, reverse, or vary Order #1 and Order #2. The Panel heard extensive testimony and evidence, including vivid photographs, detailing the dilapidated state and condition of the Property.

[82] The Board finds that the Appellants have failed to satisfy the requirements imposed upon them under s. 3 of the MHHS. Specifically, the Property is not: (1) structurally sound; (2) in a safe condition;

(3) in good repair; (4) maintained in a waterproof, windproof or weatherproof condition; (5) equipped with adequate sanitary facilities; or (6) equipped with adequate heating.

[83] Based on the above findings, Order #1 and Order #2 are confirmed and shall remain in force until such time as AHS rescinds the orders 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 24, 2023