

**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 JUNE 1, 2023**

PANEL: Paul M. Bourassa, Chair
David Rolfe, Member
Dr. Theresa A. Chika-James, Member

BETWEEN:

Angela Cornelia Makris,
(Occupant)

Appellant

-and-

ALBERTA HEALTH SERVICES, ZONE 3

Respondent

Sarah Nykolaishen,
Alberta Health Services

Heard via Video and Phone:
July 11 and 25, 2023

DECISION AND REASONS FOR DECISION

Introduction

[1] This is an appeal (the “Appeal”) to vary the written Order of an Alberta Health Services Executive Officer dated June 2, 2023 (the “Order”), which ordered that the location on the property municipally identified as 4722 51 Avenue, Wetaskiwin, Alberta, (the “Premises”) be vacated as the premises were unfit for human habitation.

[2] The two-day appeal hearing took place before the Public Health Appeal Board (the “Board”), comprising a panel of three members (the “Panel”), via video and telephone, beginning on July 11, 2023, and concluding on July 25, 2023 (the “Appeal Hearing”).

[3] On July 27, 2023, the Board issued by letter its decision to the Appellant and the Respondent. The Board directed that the vacate date indicated in item one (1) on page 3 of 5 of the Order be varied from June 30, 2023, to August 18, 2023, with detailed written reasons to follow in due course.

[4] These are the detailed reasons.

Background

[5] On May 25, 2023, the City of Wetaskiwin, Alberta sent a concern to Alberta Health Services (“AHS”) about the living conditions within Premises. The Premises are a detached single home, with a main floor and unfinished basement.

[6] On May 30, 2023, AHS Executive Officer Linda Duong (the “EO”) responded to the concern and attended the Premises to inspect it. When at the Premises, the EO observed numerous violations of the *Public Health Act*, RSA 2000, c. P-37, (the “PHA”) the *Housing Regulation* (the “Regulations”) and the *Minimum Housing and Health Standards* (the “MHHS”).

[7] Some of the violations the EO observed in the Premises were the following:

- [a] Exposed wiring.
- [b] Numerous doors, walls, ceilings, baseboards, wall trims were missing or damaged.
- [c] The electrical panel was located on a wall that has a hole in it to the exterior, exposing it to the outside elements.
- [d] The furnace heating vent pipes were made from miscellaneous materials, some of which were damaged.
- [e] The sewer pipe in the basement was missing a cap and exposed and sewage was leaking from it.

- [f] The bedroom windows did not meet emergency egress requirements, as some were too small and/or nailed shut.
- [g] There were screens missing on all windows able to be opened.
- [h] None of the bedrooms contained smoke alarms.
- [i] In the basement, there was a hydraulic bottle jack placed on top of a vertical beam to hold up the main floor, which did not appear to be structurally sound.
- [j] The basement was damp and there was extensive mould.

[8] At the time of the inspection, the Appellant, Angela Makris, was the occupant and tenant of the Premises. The registered owner of the Premises was GJS Holdings Inc. (the “Owner”).

[9] On June 1, 2023, the EO ordered that the Premises be vacated as they were unfit for human habitation and informed the Appellant verbally and the Owner by email.

[10] On June 2, 2023, the EO posted the Order on the Premises and provided it to the Appellant, which required that the Premises be vacated by June 30, 2023, and remain so until the work referred to in the Order be completed to the satisfaction of AHS.

[11] On June 13, 2023, the Board received the notice of appeal (the “Notice of Appeal”) from the Appellant. The Appellant asked that the Order be varied with regard to the requirement to vacate the premises by June 30, 2023, to provide her more time to address the violations in the Order and/or obtain financing to purchase the Premises.

[12] In addition, in the Notice of Appeal, the Appellant asked that the Order be stayed pending the outcome of the Appeal Hearing. AHS did not object to the stay pending the outcome of the Appeal Hearing. Accordingly, the stay was granted.

[13] The Appeal Hearing commenced via video and telephone, beginning on July 11, 2023, and concluded on July 25, 2023.

[14] On July 27, 2023, the Board issued by letter its decision to the Appellant and the Respondent. The Board varied the vacate date in the Order to August 18, 2023.

Timing of Appeal

[15] Section 5(3) of the PHA 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. However, section (9) of the PHA states the Board may, if it considers it appropriate to do so, extend the time within which to serve a notice of appeal.

[16] On June 1, 2023, the EO told the Appellant that she was ordering the Premises be vacated as they were unfit for human habitation. On June 2, 2023, the EO posted the Order on the Premises and provided a copy to the Appellant.

[17] On June 12, 2023, the Appellant emailed the Board indicating that she wished to appeal the Order but was having difficulty downloading the notice of appeal form from the Public Health Appeal Board website.

[18] On June 13, 2023, the Board received the Notice of Appeal from the Appellant.

[19] On July 11, 2023, prior to the start of the Appeal Hearing, the Panel discussed with the parties whether to consider it appropriate to extend the time within which for the Appellant to serve the Notice of Appeal as it was served beyond the 10 days as outlined in section 5(3) of the PHA.

[20] The Panel considered it appropriate to extend the time within which to serve the Notice of Appeal. In reaching this decision, the Board was aware of the Appellant's intention to appeal the Order 11 days from the time she became aware of the EO's order to vacate the premises as unfit for human habitation, submissions and disclosure had been provided by AHS with no objection to the timing of the appeal, and the parties agreed to proceed.

Grounds of the Appeal

[21] The Appellant's grounds of appeal can be summarized as follows:

- [a] That AHS failed to take into consideration the circumstances of the Appellant to vacate the Premises by June 30, specifically that she would require more time to permit her to address the violations in the Order and/or purchase the Premises, or find alternative accommodation.

Legal Issues

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

- [a] What should be the appropriate date in the Order to vacate the Premises to permit the Appellant to address the violations in the Order and/or purchase the Premises, or find alternative accommodation.

Jurisdiction

[23] Pursuant to the PHA, the Appeal falls within the jurisdiction of the Board, as the grounds relate to the findings of fact made by the AHS EO and whether those facts should have resulted in the Order.

Documents/Exhibits

[24] During the Appeal Hearing, a number of documents were relied upon by the parties when calling evidence or in submissions, with the intention to enter them as exhibits. While some of the documents were not formally entered as exhibits during the Appeal Hearing, nonetheless, they are as follows:

Exhibit 1 – Order to vacate from an Executive Officer of AHS

Exhibit 2 – Notice of Appeal from the Appellant

Exhibit 3 – AHS Disclosure Document (108 pages)

Exhibit 4 – AHS Submissions (7 pages and two Tabs)

Exhibit 5 – AHS Email-Preliminary Application

Exhibit 6 – AHS Preliminary Application-Letter from Wetaskiwin Fire Rescue

Exhibit 7 – AHS Additional Document -Transfer of Land.

Appellant's Position

[25] The Appellant submits that she purchased the Premises in 1998, at which time, she was the registered owner on title, and the Bank of Montreal was the mortgagee. In 2018, the Appellant encountered financial difficulties and entered into an agreement with private lender, GJS Holdings Inc., (the "Agreement") for a loan to pay her bills.

[26] The Appellant submits that her understanding of the Agreement for the loan from GJS Holdings Inc. was that it would become the mortgage holder and she would continue to be the registered owner of the Premises, while paying off the loan through monthly payments.

[27] The Appellant submits that at the time of being told on June 1, 2023, that the Premises were unfit for human habitation was the first time she realized that she was not the registered owner on title of the Premises and instead it was GJS Holdings Inc.

[28] The Appellant submits that she had already been working to address the violations listed in the Order prior to June 1, 2023, and up to June 30, 2023, which was the original date to vacate the Premises in the Order.

[29] The Appellant does not take issue with the violations listed in the Order. However, the Appellant does take issue with the date by which the work to address the violations in the Order to the satisfaction of AHS be completed or the Premises be vacated.

[30] The Appellant requests that the date to vacate the Premises be varied to August 15, 2023, to permit her to address the violations in the Order and/or purchase the Premises, or find alternative accommodation.

Respondent's Position

[31] The Respondent submits that when the EO conducted the inspection on May 30, 2023, the Premises were owned by GJS Holdings Inc. and occupied by tenants, including the Appellant, and therefore were being used as a rental accommodation.

[32] The Respondent submits that since the issuance of the Order, and specifically at the time of the re-inspection on June 29, 2023, numerous serious violations of the MHHS remained present, in addition to conditions which constitute a nuisance as defined in the PHA.

[33] The Respondent submits that the violations included, but were not limited to the following:

[a] There was exposed wiring at locations throughout the house.

- [b] Numerous doors, walls, ceilings, baseboards, and wall trims were missing or damaged throughout the Premises.
- [c] The electrical panel was located on a wall that had a hole in it to the exterior, exposing the electrical panel to the outside elements.
- [d] The unfinished basement contains a stove in an open space, as well as a toilet and bathtub with no surrounding walls.
- [e] The furnace heating vent pipes were made from miscellaneous materials, some of which were damaged.
- [f] In the basement area, the sewer pipe in the basement was missing a cap and exposed. Sewage was leaking from the pipe.
- [g] Bedroom windows did not meet emergency egress requirements and no smoke alarms were installed in any bedrooms.
- [h] A hydraulic bottle jack had been placed on top of a vertical beam to hold up the main floor and did not appear to be structurally sound.
- [i] Screens were missing at all openable windows.

[34] The Respondent takes no issue with the Appellant's request that the date to vacate the Premises be varied to August 15, 2023, to permit her to address the violations in the Order and/or purchase the Premises, or find alternative accommodation.

Analysis and Reasons

[35] The Appeal Hearing commenced on July 11, 2023, and continued and concluded on July 25, 2023.

[36] The Appellant, Ms. Makris, testified on her own behalf.

[37] AHS called the EO Linda Duong, and Sheldon Power on behalf of GJS Holdings Inc. to testify.

[38] In 1998, the Appellant bought the Premises and was the registered owner on title. In 2018, she had financial difficulties and signed the Agreement for a loan to pay her bills.

[39] The Appellant thought she was remortgaging the Premises such that GJS Holdings Inc. would become the mortgagee for the Premises, and she would remain the registered owner on title. However, the Agreement was "a quit claim" indicating that should she be in default of payments to GJS Holdings Inc., it would initiate procedures to assume ownership of the Premises and become the registered owner on title.

[40] The Appellant was making monthly payments to GJS Holdings Inc. but fell behind on the payments. When the Appellant began falling behind on her monthly payments to GJS Holdings Inc., GJS Holdings Inc. initiated procedures on June 27, 2022, to become the registered owner on title of the Premises pursuant to the Agreement.

[41] The Panel heard evidence that when GJS Holdings Inc. initiated procedures to become the registered owner on title of the Premises, the Appellant was aware about what was occurring but did not fully appreciate it. On January 18, 2023, GJS Holdings Inc. became the registered owner on title of the Premises and the Appellant became a tenant at the Premises.

[42] The Appellant continued to pay GJS Holdings Inc. monthly amounts, however, these monthly amounts were now to pay the rent as well as pay back the loan from GJS Holdings Inc. The Appellant was unaware that she was no longer the registered owner on title of the Premises until June 1, 2023, when AHS conducted the inspection.

[43] On June 1, 2023, when the EO inspected the Premises, major concerns were noted about its condition, which were contrary to the PHA, the Regulations, and the MHHS. In addition to the EO, other persons who attended the Premises included AHS inspector Gord Watt, members of the Wetaskiwin RCMP Detachment, and the Wetaskiwin Fire Chief and Assistant Fire Chief. The Wetaskiwin Fire Department provided a letter outlining many of the concerns noted in the AHS inspection report.

[44] On June 2, 2023, the Order was provided to the Appellant and to the Owner, outlining the numerous violations of the PHA to be addressed at the Premises and that it be vacated by June 30, 2023, unless the violations were remedied to the satisfaction of AHS. The Appellant does not take issue with work to be done to address the violations outlined in the Order.

[45] In the Appellant's Notice of Appeal, she requested "more time" beyond the June 30, 2023, to vacate the Premises or address the violations in the Order and/or purchase the Premises from the Owner. Furthermore, the Appellant constructively requested that the Order be stayed pending the outcome of the Appeal Hearing and the Respondent consented. The Board granted the stay.

[46] The Appellant requests that the vacate date in the Order be varied to August 15, 2023, to permit her to address the violations in the Order and/or purchase the Premises, or find alternative accommodation. The Respondent was agreeable.

Findings and Conclusion

[47] Matters of public health are of the utmost importance in Alberta. The Legislature of the Province of Alberta passed the PHA and declared that the protection and preservation of the health and safety of the public as the single most important issue under its legislative purview, except where it conflicts with the Alberta Bill of Rights.

[48] When AHS inspected the Premises on May 30, 2023, it did so pursuant to the PHA, having regard to the fact that the Appellant was a tenant of the Premises due to GJS Holdings Inc. having become the Owner on January 18, 2023.

[49] The change in ownership of the Premises was the result of the Agreement between the Appellant and GJS Holdings Inc. and the Appellant defaulting on her payments to GJS Holdings Inc. After hearing evidence from the Appellant and Mr. Sheldon Power on behalf of GJS Holdings, the Panel was satisfied and both parties agreed with the change of ownership pursuant to the Agreement.

[50] Mr. Sheldon Power, on behalf of GJS Holdings Inc., testified that he was certainly willing to discuss with the Appellant the sale of the Premises back to her.

[51] There is no doubt of the Appellant's somewhat desperate circumstances when entering into the Agreement. There is also no doubt about the severity of the violations of the PHA, the MHHS, and the Regulations in the Premises as stated in the Order.

[52] The only issue is what should be the date to vacate the Premises in the Order. Both parties agree that it should be August 15, 2023, which is a Tuesday.

[53] Having regard to all the information before the Panel, including the evidence and submissions, and, all the witnesses' testimony, the Panel directs that:

- [a] The vacate date indicated in item one (1) on page 3 of 5 of the Order be varied from June 30, 2023, to August 18, 2023, which is a Friday.
- [b] With the exception of Ms. Makris who may remain in the Premises until no later than August 18, 2023, the Premises remain closed for tenant accommodation until all remaining work described in the varied Order has been completed to the satisfaction of an Executive Officer of Alberta Health Services or is rescinded in accordance with the PHA.
- [c] The varied Order be provided to the Appellant and the Public Health Appeal Board Secretariat and posted on the Environmental Public Health website on or before August 1, 2023.

Original Signed

Paul M. Bourassa, Panel Chair

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

Date: October 12, 2023