

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 7, 2023**

PANEL: Kevin Kelly, Chair
Vicki Wearmouth, Member
David Rolfe, Member

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|-------------------------|---|--------------------------|
| BETWEEN: |) | |
| |) | |
| |) | |
| SUSAN MASSINCAUD |) | Susan Massincaud, |
| (Appellant) |) | Self-represented |
| |) | |
| - and - |) | |
| |) | |
| ALBERTA HEALTH SERVICES |) | John Siddons, |
| (Respondent) |) | Alberta Health Services, |
| |) | for the Respondent |
| |) | |
| |) | |
| |) | Heard: August 11, 2023 |
| |) | |

DECISION AND REASONS FOR DECISION

The Appeal

[1] This is an appeal (the “Appeal”) to reverse an order of an Executive Officer (“EO”) of the Respondent, Alberta Health Services (“AHS”) dated June 7, 2023 (the “Order”). The Appeal hearing took place before a panel of the Public Health Appeal Board (“Board”) on August 11, 2023 via video conference.

Board Decision

[2] In reaching its decision, the Board reviewed the following:

- a. written submissions, disclosure and oral arguments from the Appellant, Susan Massincaud (“Ms. Massincaud”);
- b. written submissions, disclosure and oral arguments from AHS;
- c. written submissions, disclosure and oral arguments from Danniella Brookes (“Ms. Brookes”), the owner of the Property described below;
- d. oral testimony given by the witnesses called by AHS (EO Manny Ahmad and EO James Zhang).

The Board rendered its decision to confirm the Order in a letter to the parties on August 11, 2023.

Background

[3] Ms. Brookes owns the mobile home located at Unit E12, 5500 Gregg Street, Blackfalds, Alberta (the “Property”). Ms. Massincaud is Ms. Brookes’ mother and at all material times was the sole occupant of the Property.

[4] On April 17, 2023 Justice E.J. Funk of the Alberta Court of King’s Bench granted an order in an application brought by AHS against Ms. Massincaud (the “Court Order”). During this Appeal Ms. Massincaud referred to her affirmed Affidavit that she signed on June 9, 2023 in response to the application (the “Affidavit”). Pursuant to the Court Order, Ms. Massincaud or any other occupant were ordered to allow AHS entry to the Property to exercise their powers under sections 59 or 60 of the Act and to do so without interference, obstruction, molesting or hindering, and in the event of a refusal, police may be contacted to assist.

[5] On June 1, 2023, AHS EOs Manny Ahmad and James Zhang inspected the Property pursuant to the Act. Ms. Massincaud was not present during the inspection, however, Ms. Brookes was in attendance for the duration of the inspection.

[6] The Order noted that the inspection of the Property disclosed breaches of the Act, the *Nuisance and General Sanitation Regulation* Alta Reg 243/2003, the *Housing Regulation*, Alta Reg 173/1999, and the *Minimum Housing and Health Standards* in and about the Property, specifically:

- a. The mobile home was packed with extreme amounts of garbage, food debris, filth, and clutter limiting mobility and access throughout the home as well as posing a potential fire hazard, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation*.
- b. A lack of running water, in contravention of section 3(1)(b)(iii) of the *Housing Regulation*.

- c. A severe pest infestation in the mobile home, including extensive amounts of mouse droppings throughout the home including the kitchen, living room, bedrooms, closets, hallway, and washroom; mice nests in several areas of the home, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation* and section 16(a) of the *Minimum Housing and Health Standards*.
- d. Missing smoke alarms in the hallway and non-functional smoke alarms in the north facing bedroom suite, contrary to section 12(a) of the *Minimum Housing and Health Standards*.
- e. Non-functioning toilet, inaccessible sink in the washroom, and possible sewage accumulation observed in the bathtub, in contravention of: i) sections 2(1), 7(a), 7(b) and 7(c)(ii) of the *Nuisance and General Sanitation Regulation*; ii) section 3(1)(b)(i) of the *Housing Regulation*; and iii) section 6(a) of the *Minimum Housing and Health Standards*.
- f. Excessive flies and other insects in the living room, kitchen, and bathroom, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation* and section 16(a) of the *Minimum Housing and Health Standards*.
- g. Excessive clutter, tools, and other various objects in the backyard of the home, and clutter and various objects were being stored in the unsecured vehicle located in the front area of the mobile home, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation*.
- h. Windows in the living room and bedrooms were not lockable, in contravention of section 3(a) of the *Minimum Housing and Health Standards*.
- i. Several plugged-in portable space heaters surrounded by clutter, paper, and other various items in the south facing office room, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation*.
- j. A functional unprotected plugged-in chest freezer was stored outside beside the mobile home, posing a potential fire hazard, in contravention of section 2(1) of the *Nuisance and General Sanitation Regulation*.

[7] The Order ordered and directed that:

1. The occupant(s) vacate the above noted Property on or before August 21, 2023 (the “Vacate Date”) and Ms. Brookes immediately secure the Property from unauthorized entry.
2. Ms. Brookes immediately undertake and diligently pursue the completion of the following work in and about the above noted Property, namely:
 - a. Remove all excessive garbage, food debris, filth, and clutter from the home.

- b. Ensure that hot and cold potable water is available for the home.
 - c. Ensure that a qualified pest control company is hired, and corrective measures are taken to remediate the pest infestation (mice, flies, and insects).
 - d. Ensure smoke alarms are installed between each sleeping area and the remainder of the suite and where hallways serve the sleeping areas the smoke alarms shall be installed within the hallway.
 - e. Ensure the toilet is functioning, the washroom sink is accessible, and the bathtub is thoroughly cleaned and disinfected. The plumbing system and the sanitary drainage system must be in proper operating condition.
 - f. Remove all excess clutter, tools, and various objects from the backyard and the interior of the vehicle located in the front yard. Ensure this vehicle is kept secured.
 - g. Ensure windows in the living room and bedrooms are capable of being secured (i.e., lockable).
 - h. Ensure space heaters are not utilized amongst excessive clutter to mitigate potential fire risk.
 - i. Ensure that the freezer and the electrical outlet where the freezer is plugged in is protected from adverse weather to mitigate potential fire risk. Alternatively, this freezer may be removed.
3. The above noted Property shall remain vacant following the Vacate Date until such time as the work referred to above is completed to the satisfaction of an Executive Officer of Alberta Health Services.

Timing of Appeal

[8] The Order indicates it was issued on June 7, 2023. The Notice of Appeal indicates Ms. Massincaud received the Order on June 27, 2023, and the Notice of Appeal is dated July 4, 2023. The Notice of Appeal and attachments were issued by email and received by the Board on July 6, 2023.

[9] Section 5(3) of the Act requires Ms. Massincaud, as the Appellant, to serve the Notice of Appeal in the prescribed form on the Board and the regional health authority within 10 days after receiving notice of the decision being appealed (in this case, the Order). Section 5(9) of the Act confers on the Board the discretion, if it considers it appropriate to do so, to extend the time within which the Notice of Appeal must be served. There was no evidence before the Board to contradict the date of the Notice of Appeal.

[10] Although there was no explanation as to why Ms. Brookes only notified Ms. Massincaud of the Order on July 27, 2023, the Board exercised its discretion in this Appeal to extend the time within which the Notice of Appeal must be served. The Board exercised its discretion because, as the sole occupant of the Property, Ms. Massincaud is directly affected by a decision of a regional health authority and feels aggrieved by the decision. The Board also accepted Ms. Massincaud's statement in the Notice of Appeal that she suffers from post-traumatic stress disorder ("PTSD"). Also, the Vacate Date noted in the Order was not until August 21, 2023.

Preliminary Matters

Preliminary Application to Narrow the Grounds of the Appeal

[11] The Notice of Appeal alleged that the only issue that needs to be addressed is that the Property has had a lack of running water, this problem has existed for years, and Ms. Massincaud suffers from PTSD and should not be evicted from her home as a safe space.

[12] Prior to the scheduled hearing date, AHS brought a preliminary application to narrow the issues on appeal. A hearing of the application was held before a panel of the Board on July 28, 2023 via videoconference.

[13] The Board considered the parties' written submissions and oral arguments, and in a letter to the parties dated July 31, 2023 the Board issued its decision to allow the application and confirmed that the issues under appeal at the merit hearing would be confined to addressing only the Inspection Report dated June 1, 2023 and the Order of an Executive Officer dated June 7, 2023. The Board issued its decision with reasons on the preliminary application to the parties on November 18, 2023.

Issues

[14] The Board must decide the following issue on this Appeal:

Should the Board confirm, reverse or vary the Order of an Executive Officer dated June 7, 2023?

Jurisdiction

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

Documents/Exhibits

[16] At the commencement of the Appeal hearing, the following documents were entered as exhibits by agreement of the parties:

Exhibit A – Appellant Disclosure – Order and Affidavit

Exhibit B – Appellant Submission – 11 pages

Exhibit C – AHS Disclosure August 4 Volumes 1 – 4

Exhibit D – AHS Written Submissions 38 pages

Exhibit E – Owner Submission – Email intro and invoice – six documents

Submissions of Ms. Massincaud

[17] A significant portion of Ms. Massincaud's written submissions contains background material and Ms. Massincaud's opinions regarding her ongoing conflicts with Ms. Brookes. The Board did not apply any weight to this portion of Ms. Massincaud's submissions, as they fall outside the scope of the issues defined by the Board.

[18] Regarding the severe mice infestation and the risk of hantavirus infection, Ms. Massincaud did not dispute there “had been” a severe mouse infestation. She submitted that there were no rodents in the Property at the time of the inspection and she had laboriously cleaned the Property of mouse feces and urine without the aid of running water. The mess in the Property was because of the cupboards being empty in order to clean them. The clutter was Ms. Massincaud’s way of organizing materials into groups to be cleaned.

[19] In response to the EO’s observation of excessive clutter, use of portable space heaters and lack of smoke alarms, Ms. Massincaud submitted that bins are filled with goods because they have been cleaned and there is no storage space. Those items that are not in bins are, or will soon be, in cardboard boxes for storage. Space heaters are required because the door is off kilter, letting in cold air, but they are never left on when she is outside the room. She submitted that there are no problems with electrical wiring, and Ms. Brookes should have replaced the smoke alarms.

[20] Regarding the lack of running water, non-functional toilet, inaccessible hand washing sink and possible sewage in the bathtub, Ms. Massincaud submitted that there was never any sewage in the bathtub, only dirty items when cleaning. She further submitted that the tub is useless for any other purpose. Because there is no running water, the sink is irrelevant. She was not able to shower or do laundry, with rationed use for other purposes. Environmental Public Health has put her at risk.

[21] In response to the Order deeming the Property unfit for human occupation, Ms. Massincaud argued that because Ms. Brookes ignored the Court Order, the house has deteriorated over the years. Ms. Massincaud questioned why AHS issued the Order now, and not after January 2018. She submitted that she has been trying to reorganize and this Appeal has cost valuable cleaning time.

[22] During the Appeal hearing, Ms. Massincaud referred to her Affidavit, where she stated that:

- a. The address of the Property is incorrect.
- b. She restated the essence of the Court Order.
- c. The house was entered by AHS without her being there and with Ms. Brookes’ assistance, and that the door was damaged during the entry.
- d. She restated her belief that Ms. Brookes holds responsibility for the condition of the house by not repairing what was needed and that because Ms. Massincaud was not present at the inspection, she was unable to explain the mess found by the inspectors.
- e. She stated that she found out on June 8, 2023 that a virtual hearing was held to discuss the results of the inspection. She does not agree that the home is uninhabitable, and Ms. Brookes should have it repaired.
- f. She referred to the Blackfalds Estates bylaws, stating Ms. Brookes has failed to comply with many of them and the Park failed to enforce the bylaws.

- g. She asks the court to rescind the Court Order and to destroy all documentation related to the inspection.
- h. She attached emails between herself, the AHS EO and counsel for AHS. The emails outline AHS' intent to inspect the Property and Ms. Massincaud's denial of access. AHS counsel then advised Ms. Massincaud that the inspection would occur on the date stated (June 1, 2023).

[23] During her oral submissions, Ms. Massincaud again wished to discuss the history of how her circumstances got to this point. She reiterated her condemnation of AHS and AHS counsel, Environmental Public Health and most especially her daughter, Ms. Brookes. She questioned the process of the EO, stating he did not open the cupboards and he did not see any mice. She wished to have the vacancy order extended to November 30, 2023 in order to give her time to gather up her belongings and move out, never to return again and to never again have anything to do with Ms. Brookes.

Submissions of Ms. Brookes

[24] Ms. Brookes referred to the six documents that comprise Exhibit E.

- a. Document 1 contains emails related to Ms. Brookes following up with the three plumbing companies that Ms. Massincaud told her she had contacted. One company does not do mobile home repairs and the other two had not spoken with Ms. Massincaud. In addition, as the property is unfit for habitation, it would need to be cleaned up prior to any work being done.
- b. Document 2 is an email from Ms. Brookes to AHS EO Zhang advising that she had tried to fix the plumbing in July 2019 but Ms. Massincaud denied the technician access.
- c. Document 3 is a copy of an invoice from "The Gentlemen Pros" plumbing shop for an inspection of the Property dated June 15, 2019. A technician could not complete the inspection due to being refused entry to the Property.
- d. Document 4 was entered as evidence to show that Ms. Brookes resent the invoice noted above to clarify that it was Ms. Massincaud, and not Ms. Brookes, who denied the plumber entry to the Property.
- e. Document 5 is a copy of a letter to Ms. Massincaud from the Blackfalds Estates Park Manager summarizing a situation where on June 8, 2019 a resident of the park reported that a fire had been lit in Ms. Massincaud's yard and that it was dangerous given the dry conditions at the time. The fire was put out and the Park Manager was advised by Ms. Brookes that she was trying to get help for Ms. Massincaud and that she would clean up the yard.
- f. Document 6 is a copy of a letter from Ms. Massincaud to Ms. Brookes dated June 6, 2019. Ms. Brookes wanted to show EO Zhang how she is treated by her mother. Ms. Massincaud advised Ms. Brookes that she will have no access to the home until the

water is fixed and that her failure to do so will result in Ms. Massincaud “proceeding against you legally.”

[25] During her oral submissions, Ms. Brookes stated that her attempts to fix the plumbing have been blocked by Ms. Massincaud, including Ms. Massincaud calling the police on her in the June 2019 incident. She asked Ms. Massincaud why the plumbers she said she contacted had not in fact spoken with Ms. Massincaud. At that point, Ms. Massincaud interjected and apologized and said the name she provided was incorrect, and she committed to providing the correct name after the Appeal hearing. Ms. Brookes stated that she had the resources to complete the work necessary on the mobile home and fully intended to do so. She was concerned that an extension to November 30, 2023 as requested by Ms. Massincaud would unnecessarily delay repairs and would complicate the process because of the cold weather.

Submissions of the Respondent

[26] The Respondent, AHS submitted that the property is owned by Ms. Massincaud’s daughter, and Ms. Massincaud is most accurately described as a “tenant at will” as there is no formal tenancy agreement between Ms. Massincaud and Ms. Brookes, and Ms. Massincaud does not pay any monthly rent to Ms. Brookes. Ms. Massincaud does, however, pay monthly fees to the mobile home park in which the mobile home is located. AHS submitted that the definition and legal effect of a tenancy at will was canvassed in-depth in the Board’s decision of *Hickie* (PHAB Appeal 03/2016).

[27] AHS submitted that the Property has numerous serious deficiencies, including: a lack of running water; it does not appear to have an operational sewage disposal system; an infestation of flies and mice; and it constitutes a hoarding scenario in which refuse, including rotting organic matter, has accumulated throughout the Property in large quantities. In its current state, the Property constitutes an immediate danger and poses long-term risks to tenant health. The Order currently imposed upon the Property declaring the Property unfit for habitation and requiring that the Property be vacated ought to remain undisturbed until such time as the deficiencies noted therein have been satisfactorily addressed.

[28] AHS submitted that the requirements of the *Nuisance and General Sanitation Regulation*, the *Housing Regulation*, and the *Minimum Housing and Health Standards* apply to the Property. AHS referred to sections 3 and 4 of the *Housing Regulation* regarding the responsibilities of the owner of a “housing Property” to ensure that, among other things, the housing Property is structurally sound, safe, in good repair, waterproof, windproof and weatherproof, with adequate sanitary facilities, heating facilities, running hot and cold water that is safe for human consumption, and space for sleeping purposes; the common areas, fixtures and furnishings are maintained, clean and sanitary; and the housing Property’s plumbing system and facilities are free from defects and maintained in proper operating condition.

[29] AHS submitted that section 4 of the *Housing Regulation* stipulates that an owner shall ensure that their housing Property complies with the requirements set forth in the *Minimum Housing and Health Standards*, and section 5(2) provides that a housing premise shall not permit a condition which poses a danger to the public health, specifically the suppression of disease.

[30] AHS also argued that the Property must abide by section 2(1) of the *Nuisance and General Sanitation Regulation*, which prohibits persons from creating, committing or maintaining a nuisance. AHS also submitted the mobile home is situated on a plot with a yard within the Blackfalds Estates Mobile Home Park, and the Property occupied by Ms. Massincaud has two bedrooms, an office/den, a kitchen, a living room and one bathroom. The Property is located near other mobile home units located on adjacent lots within the mobile-home park.

[31] AHS submitted that on June 1, 2023, AHS EOs Ahmad and Zhang attended the Property to conduct an inspection pursuant to the Act. Ms. Massincaud was not present at the time of the inspection, however, Ms. Brookes was in attendance for the duration of the inspection and the entirety of the mobile home and yard was inspected.

[32] The EOs identified several critical deficiencies, the most notable being:

- a. Lack of Running Water: When an attempt was made to run the faucets in the Property, no running water flowed, in contravention of sections 3(1)(b)(iii) and 3(2) *Housing Regulation*; section 9 *Minimum Housing and Health Standards*.
- b. Non-functioning toilet: The toilet in the bathroom could not be flushed. Furthermore, EOs Ahmad and Zhang noted that there was one bag and several receptacles in the bathtub which contained a black-coloured liquid which they suspected contained human waste, in contravention of section 3(1)(b)(i) and 3(2) *Housing Regulation* and ss. 6 and 7 *Minimum Housing and Health Standards*.
- c. Mouse Infestation: Significant quantities of mouse droppings were located throughout the Property, with an alarming amount of droppings in the kitchen. In addition, several mice nests were identified in multiple different spots spread throughout the Property indicating an infestation was present, in contravention of section 16 *Minimum Housing and Health Standards*; section 2(1) *Nuisance and General Sanitation Regulation*.
- d. Overwhelming amount of Clutter and Refuse: The Property was filled with clutter to the extent that the ability to move freely within the unit was impaired. Organic refuse in various states of decay was noted, in contravention of section 2(1) and 8(2) *Nuisance and General Sanitation Regulation*.
- e. Infestation of Flies: Flies were noted throughout the Property, likely attributable to the organic refuse that had accumulated, in contravention of section 2(1) *Nuisance and General Sanitation Regulation*; section 16 *Minimum Housing and Health Standards*.
- f. Space Heaters Surrounded by Clutter: Multiple plugged-in space heaters were noted which were in close proximity to the Property's clutter, creating a fire risk, contravention of section 2(1) *Nuisance and General Sanitation Regulation*.
- g. Missing Smoke Alarms: Smoke alarms were missing in the hallway and a nonfunctional smoke alarm was identified in one of the bedrooms, in contravention of section 12 *Minimum Housing and Health Standards*.

[33] AHS issued the Order declaring that the Property was unfit for human habitation and ordered that the Property be vacated by August 21, 2023, and stipulated that the following remedial work needed to be completed by Ms. Brookes before habitation could resume at the Property:

- a. removal of excessive garbage, food debris, filth, and clutter from the home.
- b. ensure that hot and cold potable water is available for the home.
- c. ensure that a qualified pest control company is hired, and corrective measures are taken to remediate the pest infestation (mice, flies, and insects).
- d. ensure smoke alarms are installed between each sleeping area and the remainder of the suite and where hallways serve the sleeping areas the smoke alarms shall be installed within the hallway.
- e. ensure the toilet is functioning, the washroom sink is accessible, and the bathtub is thoroughly cleaned and disinfected. The plumbing system and the sanitary drainage system must be in proper operating condition.
- f. remove all excess clutter, tools and various objects from the backyard and the interior of the vehicle located in the front yard. Ensure this vehicle is kept secured.
- g. ensure windows in the living room and bedrooms are capable of being secured (i.e. lockable).
- h. ensure space heaters are not utilized amongst excessive clutter to mitigate potential fire risk.
- i. ensure that the freezer and the electrical outlet where the freezer is plugged in is protected from adverse weather to mitigate potential fire risk. Alternatively, this freezer may be removed.

[34] AHS submitted that the Order was hand-delivered to Ms. Massincaud and Ms. Brookes in addition to being emailed.

[35] The AHS Public Health Team has taken steps to assist Ms. Massincaud in locating alternative housing. At the request of AHS Public Health, an AHS social worker was requested to identify what housing and community supports are available to Ms. Massincaud in terms of both short-term and long-term housing. After identifying the housing resources that would be available, the social worker met in-person with Ms. Massincaud to provide an overview of the available resources, as well as an explanation as to how these resources could be contacted to arrange for housing.

[36] AHS submitted that the Order declaring the Property unfit for habitation is warranted under the circumstances and must be upheld. AHS further submitted that the Property must remain vacant until the deficiencies have been satisfactorily addressed. Indeed, section 5(1) of the *Housing Regulation* expressly sets out that a property subject to an unfit order cannot be lived in.

Analysis and Reasons

[37] The Board finds the following legislation applicable to this Appeal. Section 1(1)(ee) of the Act defines a nuisance as “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”.

[38] Pursuant to sections 5, 60 and 62 of the Act:

5(11) The Board may confirm, reverse or vary the decision of the regional health authority.

60 Where an executive officer believes on reasonable and probable grounds that a nuisance exists in or on a private place or that the private place or the owner of it is in contravention of this Act or the regulations, the executive officer may, with the consent of the owner or pursuant to an order under section 61,

(a) enter in or on the private place at a reasonable hour and inspect it;

62(1) An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on

(a) an inspection of a public place under section 59 or a private place under section 60,
or

(b) a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60,

that a nuisance exists in or on the public place or private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.

62(4) An order may include, but is not limited to, provisions for the following:

(a) requiring the vacating of the place or any part of it;

(b) declaring the place or any part of it to be unfit for human habitation;

(c) requiring the closure of the place or any part of it;

(d) requiring the doing of work specified in the order in, on or about the place;

(e) requiring the removal from the place or the vicinity of the place of anything that the order states causes a nuisance;

[39] Sections 3, 4 and 5 of the *Housing Regulation* set out an owner’s obligations, maintenance standards and prohibitions:

3(1) Subject to subsection (3) and section 4, an owner shall ensure that

(a) the housing premises are

(i) structurally sound,

(ii) in a safe condition,

- (iii) in good repair, and
 - (iv) maintained in a waterproof, windproof and weatherproof condition;
- (b) the occupants of the housing premises are supplied with adequate
- (i) sanitary facilities, including a sanitary drainage system or private sewage disposal system,
 - (ii) heating facilities that are capable of maintaining a habitable indoor temperature, if the housing premises are used or intended for use during all or part of the period from September 1 in one year until May 1 in the following year,
 - (iii) running hot and cold water that is safe for human consumption, and
 - (iv) space for sleeping purposes;
- (c) the common areas of the housing premises, its fixtures and any furnishings provided by the owner are maintained in a clean and sanitary condition.

(2) An owner shall ensure that the housing premises' plumbing system and facilities provided under subsection (1)(b) are free from defects and maintained in proper operating condition.

4 An owner shall maintain the housing premises in compliance with the *Minimum Housing and Health Standards*, as approved and published by the Minister and as amended by the Minister from time to time.

5(1) No person shall occupy or permit the occupation of housing premises in respect of which an order under section 62(4)(b) of the Act is in effect.

(2) No person shall cause or permit any condition in housing premises that is or may become injurious or dangerous to the public health, including any condition that may hinder in any way the prevention or suppression of disease.

[40] The *Minimum Housing and Health Standards* contains similar wording to the *Housing Regulation* regarding a property owner's obligations. Its primary objective is to protect and promote the health and well-being of occupants of rental housing premises and of persons who may reside in the immediate vicinity of such premises. The *Minimum Housing and Health Standards* establishes minimum conditions which are essential to good health and which make housing premises safe, sanitary and fit for human habitation. Along with the *Housing Regulation*, the *Minimum Housing and Health Standards* govern the conditions and maintenance, supplied utilities, and use and occupancy of housing in Alberta. Pursuant to the Act, they are enforced by inspections of housing premises by public health inspectors and executive officers of regional health authorities.

[41] Section 2 of the *Nuisance and General Sanitation Regulation* prohibits the existence of a nuisance for a private property and elaborates on what constitutes a nuisance:

2(1) No person shall create, commit or maintain a nuisance.

(2) Without limiting the generality of subsection (1), a person who creates, commits or maintains

- (a) any premises in a condition that
- (b) any source of a discharge of water or waste, including a street, pool, ditch, gutter, watercourse, sink, cistern, water closet, portable toilet, privy, urinal, cesspool or drain in a condition that
- (c) any well, spring or other water supply, or any ice supply in a condition that
- (d) any enclosed space or building in which birds or animals are kept in such a manner or in such numbers that it
- (e) any accumulation or deposit of offensive matter, waste or manure wherever situated, that
- (f) any work, trade or business so situated that
- (g) any emission into the air of any smoke or other aerosol in a quantity or in a manner that
- (h) any building that, due to
 - (i) its not being in a clean state,
 - (ii) the presence in it of noxious vapours or odours arising from any drain, water closet or urinal, or
 - (iii) lack of ventilation in it sufficient to render harmless any gases, vapours, dust or other impurities generated in it,

is or might become injurious or dangerous to the public health or that might hinder in any manner the prevention or suppression of disease is deemed to have created, committed or maintained a nuisance.

[42] As noted above, section 5(11) of the Act provides that “The Board may confirm, reverse or vary the decision of the regional health authority”. After reviewing and considering the disclosure, written submissions and oral arguments of Ms. Massincaud, Ms. Brookes and AHS, and the oral testimony given by EOs Ahmad and Zhang, the Board finds that the Order must be confirmed.

[43] Also, as the Board has noted above, the Act defines a nuisance as “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”. Section 60 gives an EO who “believes on reasonable and probable grounds that a nuisance exists in or on a private place or that the private place or the owner of it is in contravention of this Act or the regulations” the discretion to “enter in or on the private place at a reasonable hour and inspect “.

[44] Furthermore, section 62(1) of the Act provides that “An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on (a) an inspection of...a private place under section 60...that a nuisance exists in or on the...private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.”

[45] The Board finds that the EOs inspected the Property according to their authority under section 60 of the Act, and had reasonable and probable grounds to believe that a nuisance existed in or on the Property. The Board also finds that AHS has proven on a balance of probabilities that a nuisance existed at the Property when the EOs inspected it.

[46] The Board acknowledges Ms. Massincaud's statements that she is a childhood trauma survivor, suffers from PTSD, and that the Property "has become a place of healing and comfort" to her. The Board also acknowledges that Ms. Massincaud believes that the EOs entered and inspected the Property "[A]gainst my wishes and in clear violation of the above-mentioned order of Justice E.J. Funk".

[47] However, the Board finds that the EOs inspected the Property according to their authority under section 60 of the Act, and were lawfully placed at the Property, due to Ms. Brookes, as the owner of the Property, allowing them to enter and inspect the Property. The Board also finds that the EOs had reasonable and probable grounds to believe that a nuisance existed in or on the Property, and that the Property was in contravention of the Act and the regulations.

[48] The Board further finds that AHS has proven on a balance of probabilities that a nuisance existed at the Property when the EOs inspected it. The Board does not agree with Ms. Massincaud that the home is habitable, as the Order provided numerous serious deficiencies that constitute breaches of the Act, the *Nuisance and General Sanitation Regulation*, the *Housing Regulation*, and the *Minimum Housing and Health Standards*. Neither Ms. Massincaud nor Ms. Brookes provided any compelling evidence to contradict the EOs' belief and determination that a nuisance existed at the Property. In addition, the Board finds that AHS issued the Order pursuant to their authority under section 62(1) of the Act.

Findings and Conclusion

[49] After reviewing the evidence, submissions and oral arguments made by the parties, the Board makes the following findings:

- a. A nuisance existed at the Property when the EOs inspected it, and the EOs had reasonable and probable grounds to believe that a nuisance existed in or on the Property.
- b. The Property was in contravention of the Act and the regulations to such a degree that the EOs were left with no choice but to issue the Order and declare the Property unfit for human habitation.
- c. The EOs inspected the Property and issued the Order pursuant to the discretion and authority given to them under the Act.

[50] Based on the aforementioned findings, the Board confirms the Order of an Executive Officer Unfit for Human Habitation Order to Vacate dated June 7, 2023 as follows:

- a. The Property is unfit for human habitation.

- b. The occupants must vacate the Property on or before August 21, 2023 and the owner must immediately secure the premises from unauthorized entry.
- c. The Property shall remain vacant following August 21, 2023 until such time as the work referred to in the Order is completed to the satisfaction of an Executive Officer of Alberta Health Services.

[51] 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: December 30, 2023