

**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 2, DATED AUGUST 9, 2023**

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

BETWEEN:	)	
	)	
ADOOR V. VENKATARAMANAN	)	Adoor V. Venkataramanan,
	)	Self-represented
	)	
(Appellant)	)	
	)	
- and -	)	
	)	
ALBERTA HEALTH SERVICES	)	Kyle Fowler,
	)	Alberta Health Services,
(Respondent)	)	for the Respondent
	)	
	)	
	)	
	)	Heard: September 12 and
	)	December 21, 2023

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**DECISION AND REASONS FOR DECISION**

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**The Appeal**

[1] A notice of appeal was received on August 12, 2023. This matter came before a panel of the Public Health Appeal Board (the “Panel”) on September 12 and December 21, 2023 via video conference.

[2] This is an appeal (the “Appeal”) to reverse an order of an Executive Officer (the “EO”) dated August 9, 2023 (the “Order”).

### **Board Decision**

[3] The Panel met on January 12, 2024 to deliberate. Following the Panel’s review of the oral and written evidence, the written submissions of the Appellant dated January 3, 2024 and subsequent clarification submission on January 5, 2024, and the written submissions of the Respondent on January 3, 2024 the Panel rendered its decision to vary the Order.

### **Background**

[4] The Appellant is the owner of housing premises located at 228 Canter Place SW, Calgary, Alberta (the “Premises”). An Alberta Health Services (“AHS”) EO inspected the Premises in response to a complaint. The inspection disclosed various breaches of the *Public Health Act* (the “Act”), and the EO issued a written order of an Executive Officer dated August 9, 2023. The Order directed the following work to be completed by August 16, 2023:

- (a) Repair the plumbing under the kitchen sink to ensure it is no longer leaking.
- (b) Repair the plumbing for the hot tub to ensure it is no longer leaking.
- (c) Repair and refinish the wall next to the spiral staircase.

[5] The Appellant has appealed to the Board to reverse the Order.

### **Timing of Appeal**

[6] Section 5(3) of the Act requires the Appellant to serve the notice of an appeal within 10 days after receiving notice of the decision being appealed.

[7] The Public Health Appeal Board (referred to in this decision as the “Board” and the “PHAB”) Secretariat received a notice of appeal dated August 12, 2023 (the “Notice of Appeal”) on August 14, 2023. The Notice of Appeal was therefore filed on time.

### **Grounds of the Appeal**

[8] In the Notice of Appeal, the Appellant submitted four grounds of appeal:

- (a) Ground 1: The Appellant requested that the Order regarding the kitchen sink leakage be “withdrawn and reversed” and stated that the current condition of the kitchen sink complies with the Minimum Housing and Health Standards (the “MHHS”) for the following reasons:
  - i. there are two sinks provided in the kitchen side by side; and
  - ii. while the left side sink is leaking as identified in the Order, the right side sink is not leaking and is available to the tenant.

- (b) Ground 2: The Appellant requested that the Order regarding the hot tub leakage be “withdrawn and reversed” and stated that the Order was complied with as of June 18, 2023, because the tenant stated in her email dated July 17, 2023 that “As of June 18<sup>th</sup> I have drained the hot tub to ensure there are no leaks from the hot tub into the basement”.
- (c) Ground 3: The Appellant requested that the Order regarding the wall issues be reconsidered. He disagreed with the deficiencies set out in the Order and claims that there were differences regarding the condition of the wall among the Inspection Report by the EO, the inspection reports by the Appellant’s property management company and the tenant’s observation.
- (d) Ground 4: The Appellant raised concerns regarding the partiality of the EO. He alleged the EO was “siding with” the Appellant’s property management company and the tenant, and “aiding them” in coercing him to “agree to their unfair demand to allow the tenant’s access and use of the hot tub which is not included in the list of amenities in the tenancy lease agreement”. In particular, the Appellant raises the following concerns regarding his allegation:
  - i. The EO requested that the Appellant “disconnect water supply to the hot tub” and that the hot tub be “looked into by the plumber” in correspondence prior to the Order;
  - ii. The EO extended the deadline for the kitchen sink leakage repair from July 31, 2023 to August 16, 2023 “at the behest of the tenant”; and
  - iii. The EO did not issue the Order to the Appellant’s property management company.

### **Legal Issues**

[9] The Panel must decide the following legal issue on this Appeal:

- (a) Should the Board confirm, reverse or vary the Order of an Executive Officer dated August 9, 2023?

### **Jurisdiction**

[10] Section 5(2) of the Act provides that

5(2) A person who

- (a) is directly affected by a decision of a regional health authority, and
- (b) feels himself or herself aggrieved by the decision

may appeal the decision to the Board.

[11] The Appellant is the owner of the Premises, and therefore is a person who is directly affected and feels aggrieved by the Order. Accordingly, the Panel has jurisdiction to hear the Appeal.

## **Preliminary Applications**

### **Application for a Stay of the Order**

[12] In the Notice of Appeal, the Appellant requested a stay of the Order. In an email dated August 23, 2023, the Respondent indicated that AHS had no objection to a stay of the Order pending the outcome of the Appeal hearing assuming the hearing proceeds in a timely manner. Pursuant to section 3.5.4(a) of the PHAB Rules of Procedure, the Presiding PHAB Member may make an immediate order granting the stay of the decision appealed pending the hearing of the appeal. Upon the indication that AHS had no objection to the stay, the stay was granted.

[13] The hearing commenced on September 12, 2023, but was not completed in the available time, thereby requiring a second day. While the Board attempted to secure a date for the conclusion of the hearing within a reasonable time, it became apparent that the hearing could not be concluded until mid-October. The Respondent objected to the extended period by which to complete the hearing on the merits, and by extension, the continuation of the stay of the Order until the hearing on the merits is completed.

[14] Having received the positions of the Appellant and the Respondent on the continuation of the stay, the Panel met on October 5, 2023 to consider the Parties' submissions. After deliberation, the Panel decided to grant the continuation of the stay with conditions. The Panel decided that the Order would remain stayed with the condition that the hot tub in the Premises referred to in the Order shall remain drained and unused given the apparent violation of the MHHS noted in the Order, on page 1, item b.

[15] While arranging a suitable date for the second day of the merit hearing, the Board received a preliminary application from the Appellant asking that the current Panel recuse itself and that the Appeal be put before a new panel. The Panel considered the Appellant's application and decided that:

- (a) The Order would remain stayed with the noted condition until such time as a decision on the recusal of the current Panel is rendered. Should the application for recusal be successful, all actions of the current Panel would be struck, effectively requiring the proceedings to begin anew, including any application for a stay of the Order.
- (b) Should the Panel not recuse itself, the stay with the above noted condition would continue until the conclusion of the Appeal hearing and a decision on the merits is made. The Panel also directed that the second day of the hearing would be set within 14 days of the decision on the application for recusal.

### **Preliminary Applications from the Appellant**

[16] Between the first day of the hearing, September 12, 2023, and the second day of the hearing, December 21, 2023, the Board received nine preliminary applications from the Appellant:

1. Application to Recuse the Chair and Members of the Panel
2. Application to Accept Late Submission

3. Application to Allow Written Closing Argument
4. Application to Allow Video Recording of the Hearing
5. Application to Disallow AHS Witness
6. Application to Review the Recusal Decision
7. Application to Review Accept Late Submission Decision
8. Application to Confirm Appellant's Position
9. Application to Adjourn Hearing until Preliminary Application Decisions are Rendered

[17] The entirety of the submissions, disclosure and numerous exhibits provided by the Appellant in relation to his nine preliminary applications and the Appeal hearing, and all submissions, disclosure and exhibits provided by AHS, have not been summarized in exhaustive detail in the Panel's decisions regarding the Appellant's nine preliminary applications. However, the Panel has carefully considered all the submissions, disclosure and exhibits submitted by the Appellant and AHS in support of their respective positions regarding the preliminary applications and the Appeal hearing.

[18] Preliminary applications 1 and 2 were addressed prior to the second day of the hearing on December 21, 2023.

#### **Preliminary Application 1 to Recuse the Chair and Members of the Panel**

[19] The Panel considered the Appellant's preliminary application 1, where he submitted a 15 page document seeking the Panel's recusal, followed by a 15 page rebuttal to AHS' reply submissions consisting of 13 pages and six attachments. The Panel dismissed that application, and its written decision with reasons was circulated to the parties on November 20, 2023.

#### **Preliminary Application 2 to Accept Late Submission**

[20] Immediately prior to day 1 of the Appeal hearing, the Appellant emailed to the Board Secretariat a 43 page document setting out the Appellant's position on the Appeal. Due to the submission being provided well past the deadline set by the Board, and noting that it was not provided to AHS, the Board did not enter the document as an Exhibit. Application 2 sought to have the Board reconsider acceptance of the document. In the alternative the Appellant sought removal of AHS's submissions from the Exhibits. The Panel considered the Appellant's preliminary application 2 and dismissed the application, and its written decision with reasons was circulated to the parties on December 11, 2023.

[21] Preliminary applications 3 – 9 were discussed and ruled on at the beginning of the second day of the hearing on December 21, 2023.

#### **Preliminary Application 3 to Allow Written Closing Argument**

[22] The Panel considered the Appellant's preliminary application 3 and decided that the parties would be allowed to provide closing statements via written submissions three days after the close of the Appeal hearing.

### **Preliminary Application 4 to Allow Video Recording of the Hearing**

[23] The Panel dismissed the Appellant's preliminary application 4 to make a video recording of the Appeal hearing for the following reasons.

[24] Pursuant to the Board's Rules of Procedure, "The PHAB will record the entire hearing for sole use by the PHAB in making its decision" (Rule 4.3.1). The Rules of Procedure also provide that "Parties are not permitted to use any Electronic Devices during hearings without the PHAB's consent" (Rule 4.3.3). Additionally, "At the discretion of the Presiding PHAB Member, Parties are permitted to use Electronic Devices for the purposes of assisting in the presentation of their case to the PHAB, so long as the device is in silent mode, is not disruptive to the hearing, and is not used to record or photograph the hearing" (Rule 4.3.4). The Panel exercised its discretion under the Rules of Procedure in not permitting the Appellant and the Respondent to record or photograph the hearing.

### **Preliminary Application 5 to Disallow AHS Witness**

[25] The Panel considered the Appellant's preliminary application 5 to not allow EO Leeanne Hoshino to testify in the Appeal hearing. The Appellant submitted that AHS did not inform him that AHS would be calling EO Hoshino as a witness, citing 3.8.3 of the Rules of Procedure, which provides that the Parties will provide to the Board Secretariat "a list of witnesses to be called by the Party, along with a summary of each witness' anticipated evidence". The Appellant also submitted that it was procedurally unfair for the Panel to allow EO Hoshino to be present throughout the Appeal hearing because she was not a party or an observer.

[26] The Panel dismissed the Appellant's preliminary application 5 for the following reasons. The Panel notes that neither AHS nor the Appellant provided a list of witnesses they intended to call at the Appeal hearing. However, the Board's Rules of Procedure provide that "The PHAB has all the powers necessary to conduct a fair, expeditious, and impartial hearing of an appeal including, but not limited to...to regulate the course of hearings before it, and the conduct of persons at such hearings..." and "to call and question witnesses". In addition, the Rules of Procedure provide that "The Parties to a hearing may call any Expert Witness or Lay Witness that they feel is necessary to provide testimony or relevant evidence in their case" (Rule 4.5.1), and "The PHAB is not bound by the formal rules of evidence" (Rule 4.6.1).

[27] AHS informed the Panel and the Appellant during the Appeal hearing that it intended to call EO Hoshino as a witness, and that EO Hoshino would also be present during the Appeal hearing in her capacity as corporate representative of AHS, with the authority to provide instructions to AHS legal counsel as required. The Panel finds that AHS felt EO Hoshino was necessary to call as a witness to provide testimony or relevant evidence in their case. Furthermore, the Rules of Procedure allow the parties to a hearing to call any expert or lay witness they feel is necessary to provide testimony or relevant evidence in their case.

[28] The Panel finds that, as the EO who issued the Order, EO Hoshino would be in a position to give evidence that bears relevance on the issue to be decided in the Appeal hearing, and therefore AHS is allowed to call EO Hoshino as a witness. The Panel also finds that, although typically witnesses are not permitted to observe a hearing before giving their evidence, it would not be procedurally unfair to allow EO Hoshino to be present throughout the Appeal hearing, because as

the corporate representative of AHS, with the authority to provide instructions to AHS legal counsel as required, she is entitled to observe the entire Appeal hearing.

### **Preliminary Application 6 to Review the Panel's Recusal Decision**

[29] The Appellant brought an application for the Panel to review its prior decision of preliminary application 1, where the Panel dismissed the Appellant's application to recuse the Chair and Members of the Panel from hearing the Appeal hearing, because the Panel's decision to dismiss that application "is fundamentally flawed". Alternatively, the Appellant seeks the recusal of the Chair and Members of the Panel from hearing the Appeal hearing "based on new evidence and facts subsequent to October 2, 2023 and on new grounds". The Appellant submitted "that the doctrine of Issue Estoppel or Cause of action estoppel cannot be invoked for rejecting this application as Canadian laws are well settled in this matter". The Appellant further argued that "the Panel did not meet on October 5, 2023 to consider the application for recusal". The Appellant submitted that he sent emails to the Board Secretariat in October and November 2023, inquiring about the status of the Panel's decision, and the Appellant's submissions confirm that the Board Secretariat responded to each of those emails, informing the Appellant that, among other things, the Order would remain stayed until the recusal decision is rendered.

[30] The Appellant makes several serious allegations in his preliminary application 6 submission, including: the Appellant asserted that the Panel did not meet on October 5, 2023 to consider preliminary application 1; "the "PHAB did not hear and decide on the Application for Recusal on October 5, 2023 and the statements made in its order in this regard are UNTRUE"; and the Panel's decision dated November 20, 2023 contained misrepresentations. The Appellant also submitted that "Issue estoppel cannot be invoked by the Panel to deny availability of a fair and impartial hearing to the Appellant". He further argued that "the same question has not been decided by PHAB Panel in its Order dated November 20, 2023" and that the Appeal hearing had not been completed at the time he brought this preliminary application.

[31] The Panel carefully considered and dismissed the Appellant's preliminary application 6 for the following reasons. The Panel finds that the Appellant has not provided any new evidence to substantiate his above allegations that the Panel made untrue statements or misrepresentations, or that the Panel did not meet on October 5, 2023 to consider preliminary application 1. As stated in the Panel's decision that was circulated to the parties on November 20, 2023, the Panel received preliminary application 1 on September 18, 2023 seeking the Panel's recusal, and the Panel met on October 5, 2023 to consider that preliminary application. The fact that the Panel did not issue its written decision on the same date it met to consider that application does not mean that the Panel did not reach a decision on preliminary application 1 on that date. Nor is the Panel required to render a decision the same day it met to consider that application, and the Panel is also not required to issue an interim decision before it issues its final written decision with reasons. The Panel carefully and thoroughly considered the Appellant's preliminary recusal application on October 5, 2023. The Panel then drafted its decision with reasons and carefully reviewed the draft decision, and then it issued its 21 page decision with reasons to the parties on November 20, 2023. The Appellant's attempt to have the same issue revisited after the Panel previously considered the issue and rendered a decision could be construed an abuse of process.

[32] The Appellant's preliminary application 6 also fails to show, as the Appellant argued, that the Panel did not consider his previous recusal application. In addition to not providing any new

compelling evidence in preliminary application 6 to substantiate revisiting a decision that the Panel previously issued on November 20, 2023, the Appellant reargued parts of his original recusal application, and makes several unfounded allegations about the Panel making untrue statements and misrepresentations.

[33] The Panel finds that the Appellant's preliminary application 6 is without merit. The Panel previously considered the Appellant's preliminary application 1 to recuse the Chair and Members of the Panel from hearing the Appeal hearing and dismissed that application, its written decision with reasons was circulated to the parties on November 20, 2023, and the Panel will not reopen a decision it has previously made on the same application. The Panel also finds that, if accepted, the proposed new evidence could not have affected the outcome of the previous recusal application that the Panel considered and dismissed.

### **Preliminary Application 7 to Review Accept Late Submission Decision**

[34] The Appellant submitted an 11 page document in support of his preliminary application 7, framed as an "Application of the Appellant for PHAB Panel's review of its decision on Appellant's application for Accepting Appellant's lately submitted Written Submissions as Exhibit and part of Appeal hearing records OR Alternatively for Ordering Removal of Respondent AHS' lately submitted Written Submissions as Exhibit and part of Appeal hearing records in Appeal No. 08-2023". He characterized the Panel's previous decision to dismiss his prior application seeking the same relief that he seeks in preliminary application 7 as "flawed".

[35] The Panel considered and dismisses the Appellant's preliminary application 7. The Appellant is applying to have the Panel review a decision that it previously made. The Panel previously considered the Appellant's preliminary application 2 and dismissed that application and its written decision with reasons was circulated to the parties on December 11, 2023. The Panel will not revisit an application that it has previously considered and rendered a decision on during the Appeal proceedings. Again, the Appellant's attempt to have the same issue revisited after the Panel previously considered it and rendered a decision could be construed as an abuse of process.

### **Preliminary Application 8 to Confirm Appellant's Position**

[36] The Appellant brought an application "to PHAB Panel to confirm Appellant's position on its legal obligation to consider his Written Submissions in Appeal No. 08-2023". The Panel considered and dismisses the Appellant's preliminary application 8, as the Panel previously considered and rendered its decision on this issue. The Panel also previously noted in its written decision with reasons that were issued to the parties on December 11, 2023 that the AHS submissions and disclosure that have been entered into evidence as an exhibit, and the Appellant's oral presentation during the Appeal hearing, which was primarily a verbatim reading of his 43 page document, will both be given appropriate weight by the Panel when it makes its decision on the merits of the Appeal.

### **Preliminary Application 9 to Adjourn Hearing until Preliminary Application Decisions are Rendered**

[37] The Appellant's preliminary application 9 is dismissed. Although the Appellant filed the above preliminary applications 3 – 9 between December 18 and 20, 2023, the Panel carefully



considered all of those applications prior to the continuation and issued its decisions orally at the beginning of day 2 of the Appeal hearing. Accordingly, the Panel directed that the Appeal hearing would continue on its scheduled date of December 21, 2023.

### **Documents/Exhibits**

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

- A: AHS Disclosure – 164 pages plus three videos
- B: AHS Submissions – 54 pages
- C: Appellant Disclosure – 45 exhibits
- D: Video by the Tenant 29 seconds – hot tub leaking in basement – June 18\_23
- E: Video by Tenant 6 seconds – hot tub pump leaking – June 18\_23

### **Submissions of the Appellant**

[39] The Appellant’s submissions, including numerous quoted passages, are presented as follows:

- (a) The Appellant entered into an agency agreement in December 2022 with Power Properties Ltd. (the “Agent”) to rent out and manage the Premises because he was out of the country. The Appellant submitted that “the Agent planted Kathryn Ring as the tenant in February 2023 by misrepresenting facts. When I requested the Agent to carry out the repairs as provided for in the agency agreement, the Agent emailed me on July 11, 2023 a notice terminating the agency agreement without carrying out those alleged repairs. I responded to the Agent’s notice of termination with my signed legal document, and my agency agreement with the Agent is not legally terminated till now. [My Exhibits 2, 5]. Despite my requests to complete the alleged repairs immediately the Agent did not carry out the repairs from June 18, 2023, and tenant is living till date in my property happily despite the alleged no water to the kitchen [dishwasher included] scenario. The tenant complained to the AHS on July 12, 2023 regarding the garburator leak deliberately misstating the facts. The EO on her part, manipulated the AHS internal records and falsified it deliberately suppressing the facts.”
- (b) The Appellant referred to section 2.3.2 of the PHAB Rules, which “recognizes that over time, its prior decisions have developed into a useful benchmark which may indicate how the PHAB will view certain types of appeals.” He also submitted that he “put forth my basic 3 factual and legal arguments that straightforwardly render the EO’s Order invalid and to be rescinded and reversed in its entirety based on past PHAB Benchmark Decisions”.
  - i. In order for something to be considered a violation under the Act, the Housing Regulations or the MHHS, a health hazard must be identified. [Para 23].
  - ii. As such, it is expected that EOs will not simply disclose their finding as violations without determining if they would compromise safety of the tenant living in the Premises. [Para 25]

- iii. EOs must only rely on facts and evidence, not assumptions or hearsay, as is the case here. EOs have a tremendous amount of authority pursuant to the Act. That authority must be used judiciously and firmly within the four corners of the Act, the Regulations and the MHHS. To do otherwise erodes public confidence in the important work of EOs and AHS.
- (c) The EO's Inspection Report and Order did not identify any health hazard at the time of inspection on July 14, 2023 that was associated with any of the three violations.
- (d) PHAB Past Decision Appeal No. 05-2019 "Between Estate of Josh Decker vs Order of EO issued by AHS clearly identifies under Analysis and Reasons that, "It appears from the Order and the EO's testimony that, the moment something is not working, is broken or is missing, automatically results in a violation under the Act, the Housing Regulations or the MHHS. However, this cannot be the case, nor should it be.": [a] In order for something to be considered a violation under the Act, the Housing Regulations or the MHHS, a health hazard must be identified. [Para 23]: [b] As such, it is expected that EOs will not simply disclose their finding as violations without determining if they would compromise the safety of a tenant living in the Premises. [Para 25] The fact that none of the disclosed breaches in the EO's Order identified any health hazard and determined that they would compromise the safety of the tenant living in the premises, and also the fact that EO testified on Dec 21, 2023 that she did not identify existence of any health hazard during her inspection on July 14, 2023 as pointed out above, prove that the EO has erred in finding all the three violations disclosed in her Order, and Appellant's property was not in violation of MHHS and the Act at the time of inspection by the EO on July 14, 2023 pertaining to all the three disclosed breaches contained in the EO's Order.
- (e) The EO's July 14th inspection report reflects the allegation by tenant "I still do not have access to running water in my kitchen, or a working dishwasher or water and ice to my fridge", by citing grounds of violation as section 14[i] of MHHS. The Panel should note that the EO failed to identify or suppressed the fact that two kitchen sinks were available at the time of her inspection and the right side kitchen sink was not leaking and available for the tenant's use on July 14th. The AHS EO's disclosure findings in her July 14th inspection report does not mention that the garburator under the left side kitchen sink is leaking. The word "left side kitchen sink" is not mentioned at all. It vaguely states that there was an active leak under the kitchen sink and cited violation of section 14[i] of MHHS. The above fact proves that the EO simply issued her inspection report of July 14th based on the hearsay of the tenant and not based on facts and evidence.
  - i. During direct examination, to AHS counsel's leading questions, the EO testified that a. She did not inspect Appellant's property after July 14, 2023, and that she prepared her 2023-08-09 Offsite Assessment Inspection report based on her conversation with the tenant and not based on her direct assessment, and that is her practice.
  - ii. In her opinion it was not necessary to visit the property again.

- iii. Her Order describes violations from her initial report. Each of the 3 violations are based on her observation on July 14th.
- (f) EO's second August 9th inspection report was issued subsequent to issue of the Order dated August 9th and not before.
- (g) The Panel should note that all three disclosures on breaches under PHAB and MHHS stated in the August 9th Order are different from those stated in EO's July 14th inspection report.
- (h) The EO's testimony during cross examination proves the fact that her August 9th Order is NOT BASED on and does NOT ALIGN with her first inspection report of July 14th which is the only inspection she did on my property.
- (i) Her Order describes violations from her initial report" and 11.d "Each of the 3 violations are based on her observation on July 14th" are false as the Order does not describe violations from her initial report of July 14th, and the 3 violations indicated on the Order are not based on her observation on July 14th, which fact is proved below. July 14th inspection report states "Are all components of a food preparation area provided and maintained, .....First Cited: 2023-07-14 Compliance Result: NO-Not In Compliance" - KITCHEN SINK DEFICIENCIES The kitchen sink is not supplied with potable hot and cold water... Minimum Housing and Health Standards section 14[a][i], and the Order states "The plumbing under the kitchen sink was leaking into the cabinet below. This is in contravention of section IV(6)(c)... July 14th inspection report states, "There is evidence of water leaking from the hot tub into the basement (ex. rusting, water staining). The plumbing system... Minimum Housing and Health Standards section 6[a, c], and the Order states, "There was evidence of water leaking from the hot tub into the basement...IV[6][c] of the Minimum Housing and Health Standards... July 14th inspection report states, "Paint was peeling from the drywall located around the spiral staircase. Corrective action: Please repaint to ensure the drywall is in good repair.", and the Order states, "The wall adjacent to the spiral staircase was in disrepair; the paint was lifting. Repair and refinish the wall next to the spiral staircase." [My Exhibits 11 and 39]
- (j) Facts presented prove that the EO's Order is based on hearsay from tenant and input from her AHS coordinator and not based on facts and evidence. Based on the above facts, I respectfully request the Panel to rescind and reverse the EO's Order dated August 9, 2023 in its entirety. [Case law relied: PHAB Past Decision Appeal No.: 01-2020 para 90].
- (k) Regarding "The Plumbing under the kitchen sink was leaking into the cabinet below", the Panel to note that if both the left side sink and right side sink were leaking as testified by EO on December 21, 2023, why the July 14th inspection report described the noncompliance as "There is an active leak under the kitchen sink". The "singular" an and "not plural" is to be noted. The Panel to note that AHS did not provide any evidence to prove that the right side sink was leaking at the time of inspection either in AHS disclosure or during specific questioning

during cross examination. Facts pointed out prove that the EO simply issued her Order based on the hearsay of the tenant and her coordinator/reviewer, and based on assumptions, and not based on facts and evidence. [PHAB Past Decisions 01-2020 and 05-2019 - EOs must only rely on facts and evidence, not assumptions or hearsay]. The EO testified that she did only one inspection on July 14th. Facts pointed out clearly prove that the EO prepared and issued her order and second August 9th inspection report based on the hearsay from tenant, input from her coordinator and not based on her observation during her own and only inspection on July 14th.

- (l) On July 14th, the EO failed to inspect whether the dishwasher was leaking, or the garburator was leaking into the left side sink cabinet and totally ignored existence of the right side sink and simply stated that there is an active leak under the kitchen sink and that the kitchen sink is not supplied with potable hot and cold water or suitably sized to allow preparation of food, washing utensils and any other cleaning operation citing violation of section 14[i] of MHHS.
- (m) Panel to note that the grounds of violation cited in the August 9th Order is based on findings under section IV[6,C] of MHHS and not on section 14[a][i] of MHHS cited in the July 14th inspection report.
- (n) Facts pointed out prove that the EO's August 9th Order is not based on her July 14th inspection findings and is based on the hearsay from tenant on August 9th and input from her reviewer who was not part of the inspection. The August 9th inspection report on which the Order is based is actually issued after issue of the Order. This is improper and to be viewed as manipulation.
- (o) Panel to note if the contents of the second August 9th and first July 14th reports are the same then what was the need for issuing the same report again as Offsite inspection report on August 9th and why the Order is not based on the July 14th report itself, what is the necessity to a new report on August 9th after issuing the Order on August 9th to have alignment with the Order as testified by the EO during cross examination. This also proves that EO's testimony is false. Panel to note that in light of above facts, the grounds of violation cited in the August 9th Order are based on false or inaccurate findings under section IV[6,C] of MHHS [cited in August 9th Offsite assessment report which is based on tenant's hearsay] and not on the MHHS section 14[a][i] cited in the July 14th inspection report. Panel to note that EOs must only rely on facts and evidence, not on assumptions or hearsay. Hence the findings of the EO are in error, and based on false or inaccurate findings under section IV[6,C] of MHHS. The grounds upon which the Order is based are false or inaccurate such that the Order is without proper basis.
- (p) The EO did not declare the property unsuitable for renting until such time as the violation on section 14(i) of MHHS is complied with, showing that the EO did not have any concern for Public [tenant] safety which is mandated by the Act and MHHS, and failed to discharge her duty and obligation in properly implementing the Act and MHHS which are enacted for the safety of the public in Alberta.

- (q) Section 14[a][i] of MHHS stipulates that every housing premises shall be provided with a food preparation area, which includes “a kitchen sink that is supplied with potable hot and cold water...” It does not stipulate provision of multiple sinks in kitchen. The Appellant submits that his property is provided with two sinks such that if one sink becomes unusable it should not be used and the other sink will be available for occupant’s use. The left side sink is connected to the garburator and the right side sink is directly plumbed. The right side kitchen sink was never reported to be leaking and the tenant is living happily in the property using the right side kitchen sink from June 18, 2023 till date.
- (r) Apart from the fact that the garburator is an amenity and as the left side kitchen is not used by the tenant as of June 18,2023, [See My Exhibits 9, 10 and tenant’s testimony] there is no question of the garburator, damaged by the tenant, is leaking now. Thus, there is no noncompliance to section 6[a, c] of MHHS with the non-usage of the left side sink and availability of the functional right side sink now. Facts pointed out show that the right side kitchen sink was not leaking during July 14th inspection and the tenant is using the right side kitchen sink till date. Since the right side kitchen sink is available to the tenant and its continued availability is testified by both the tenant and AHS counsel on December 21, 2023, the property was/is not in violation of section 14 [a] [i] and/or section 6[a][c] of the MHHS.
- (s) I, the Appellant respectfully request the Panel to direct AHS to issue a directive and order to the tenant that she shall not use the left side sink till the garburator damage is attended to, as the fully functional right side kitchen sink satisfies both section 14[i] and section 6[c] of MHHS.
- (t) The video exhibits 7.1 and 7.2 are not authentic as they are edited and tampered with, and are not original lacking original date stamping to prove authenticity. Hence, they cannot be admitted as evidence or relied upon. The video exhibit 7.3 of AHS is again edited by AHS stamping it “7.3 IMG\_2664” The same video is stamped as “Exhibit 15 Video” [My exhibit 15] and was taken by the tenant on July 4th as testified by her. AHS disclosure contains the same video as exhibit 7.3 Video taken by tenant – July 7, 2023. Hence video exhibit 7.3 of AHS is not admissible evidence or not to be relied upon. Since AHS exhibit 7.3 video was taken by tenant on July 4th, it is hearsay evidence submitted by AHS and hence cannot be admitted as evidence and relied upon. All the three inadmissible and edited video exhibits of AHS show only the left side sink and not the right side kitchen sink to prove that it was leaking during EO’s inspection on July 14th. AHS has not provided any credible evidence to prove the alleged kitchen sink leakage disclosure.
- (u) All the arguments submitted in para 45 through 57 above prove that the right side kitchen sink was not leaking and was functional during EO’s inspection on July 14th, and EO erred in her findings. EO’s disclosures in her inspection report and Order are in error based on inaccurate findings and the grounds upon which the Order is based are false or inaccurate such that the Order is without proper basis in finding a violation under MHHS namely, under section 14[a][i] or section

IV[6][a,c] of MHHS. [PHAB Past Decisions - 05-2019 and 01-2020] Hence, based on arguments submitted above, the EO's Order and directive "The plumbing under the kitchen sink was leaking into the cabinet below" and "Repair the plumbing under the kitchen sink to ensure it is no longer leaking" is to be rescinded and reversed in its entirety.

- (v) Regarding "There was evidence of water leaking from the hot tub into the basement", the Appellant submits that 2 bath tubs and one standing shower are provided in his property for the tenant's use. This complies with the MHHS. The hot tub is not included in the list of amenities in the Tenancy lease agreement. Any property not rented out to the tenant cannot be considered as a public property as defined in the Act. The EO did not seek the landlord's permission to enter the 'Private premise of hot tub' and exceeded her authority.
- (w) The hot tub is not an Equipment and Furnishing defined in section IV of MHHS and is not connected to the housing Plumbing and Drainage System defined in section IV.6 of MHHS. As the hot tub is not part of the premise's Plumbing and Drainage System, the hot tub is outside the jurisdiction of MHHS. It is also not a Public premise as it is not included in rental.
- (x) During direct examination, the EO testified that:
  - i. She did not see any actual leak from the hot tub, but noticed little drip from pump,
  - ii. the hot tub was empty, she was never on site when hot tub was full with water,
  - iii. she was never present when water was dripping from the walls or plumbing lines,
  - iv. her observations are based solely on water damage to the plates,
  - v. she did not observe water leaking, but observed water damage,
  - vi. Plumbing to hot tub is fully accessible from basement,
  - vii. hot tub is accessible from office, with no exterior access to hot tub at all, and
  - viii. nothing happened on compliance.
- (y) During cross examination on the hot tub, the EO testified that:
  - i. there was rusting on the pillars,
  - ii. water staining on the walls,
  - iii. stain and water damage in ceiling,
  - iv. a bit of water dripping from the pump,
  - v. obviously there was water damage previously,
  - vi. it was evident that there was water leak previously,
  - vii. She did not recall any smell,
  - viii. she does not recall whether it was dry or wet and she does not recall details,

- ix. the pump leakage was not draining anywhere, the tenant actually showed that to her,
  - x. the pump leak was not gushing or anything like that and it was little,
  - xi. she did not recall any smell,
  - xii. No smell at rusted metal plates,
  - xiii. there was no actual leak on the ceiling of basement,
  - xiv. she was concerned about flooding in the basement.
- (z) When the hot tub was empty with no water in it, it is not possible for the pump, which draws water from hot tub, to leak or even to drip. This proves that the EO's testimony is false beyond any doubt. The hot tub is not connected to and is not part of the premise's plumbing and drainage system. This proves that EO's testimony given is false.
- (aa) Facts pointed out clearly show beyond doubt that the EO's findings on July 14th on the hot tub leakage are not based on facts and evidence, and are based on assumptions and imagination, and hearsay. The property encountered two extensive water damages in the years 2018 and 2020 and the water damage marks noticed by EO on the metal plates at the bottom of the pillars, walls and basement ceiling were all caused by the water damages in 2018 and 2020 and not between June 13 and 18, 2023 due to alleged hot tub leak testified by tenant. These water damages were properly handled by the Appellant through insurance and paying from his pocket. See exhibit on proof of water damaged pipe repair in 2020 attached to this submission [My Exhibit A to Written Closing Argument].
- (bb) The tenant testified that the hot tub leak started between June 13th and June 18th and she emptied the hot tub on June 18th. A mere 3 or 5 days drip leakage from hot tub would not rust metal plates to the extent observed by the EO.
- (cc) The EO's Order dated August 9, 2023 states that there WAS evidence of water leaking from the hot tub into the basement. It may be noted that an order is meant to communicate a violation that exists at the time of the inspection and not at any other time. [PHAB past Decision 04-2019]. This shows that the EO relied on the hearsay evidence from the tenant. This also proves that the EO's findings and Order are not based on facts and evidence and are based on assumptions and hence the EO has erred in finding a violation under section IV [6, a, c] of MHHS. [PHAB Past Decisions - 04-2019 and 05-2019] 85. The EO did not find any safety issues or health hazard due to alleged hot tub leakage during her inspection on July 14th.
- (dd) The EO's disclosure and Order on the hot tub leakage are based on assumptions and hearsay from the tenant and are not based on facts and evidence. Thus the findings of the EO are in error and the grounds upon which the Order is based are inaccurate or false such that the Order is without proper basis in finding a violation under section IV[6, a, c] of MHHS. [PHAB Past Decisions - 05-2019 and 01-2020]. My property was not in contravention of section IV(6)(c) of the MHHS pertaining to disclosure "b. There was evidence of water leaking from the hot tub

into the basement” in EO’s Order. Hence, I respectfully request the Panel to rescind and reverse EO’s disclosure and Order and directive on “b. There was evidence of water leaking from the hot tub into the basement” and “Repair the plumbing for the hot tub to ensure it is no longer leaking” in its entirety.

- (ee) Regarding “The wall adjacent to the spiral staircase was in disrepair; the paint was lifting”, the EO’s August 9th Order and inspection report were prepared by her in conjunction with AHS coordinator who was not part of the inspection. EO modified her original July 14th inspection report based on the input from her reviewer. She changed the violation description “Paint was peeling from the drywall located around the spiral staircase. Corrective action: Please repaint to ensure the drywall is in good repair” to “The wall adjacent to the spiral staircase was in disrepair; the paint was lifting” and “Repair and refinish the wall next to the spiral staircase”. Paint “peeling” was changed to paint “lifting” and “repaint” was changed to “Repair and refinish” in the Order based on the correction by EO’s reviewer and tenant’s email dated July 24th addressed to the EO [My exhibit 10], and more obviously to protect the tenant from the consequences of her unauthorized use of the hot tub that damaged the walls due to water vapor condensation which I pointed out in my email dated July 19, 2023 at 3:24 AM addressed to the EO [My exhibit 21]. Hence, the EO’s Order is based on assumptions and hearsay, and not based on facts and evidence. Thus, the findings of the EO are in error and the grounds upon which the Order is based are inaccurate or false such that the Order is without proper basis in finding a violation under section III[5] of MHHS. [PHAB Past Decisions - 05-2019] The EO’s Order does not disclose that the wall was in a condition that renders it not easy to clean. It does not describe how just a small lifting of paint in one or two spots on the wall contravenes section III[5] of MHHS.
- (ff) The EO’s Inspection Report and Order do not identify existence of any health hazard at the time of inspection on July 14, 2023. [PHAB Past Decisions - 05-2019] Facts presented prove that the property was not in violation of MHHS Section III[5] at the time of EO’s inspection on July 14th .
- (gg) In light of the facts submitted, I respectfully request the Panel to rescind and reverse the EO’s Order, and directive on “c. The wall adjacent to the spiral staircase was in disrepair; Repair and refinish the wall next to the spiral staircase” in its entirety.
- (hh) It is very important to note that if EO was truly interested in implementing the Act, the MHHS, and help the tenant, she should have sent, or at least copied her inspection disclosures and Order to the Agent, Power Properties Ltd., then the Agent would have been legally bound to comply with the Order and MHHS and the alleged violations would have been quickly repaired. The determined act of the EO in not directing her inspection reports and Order to the Agent proves the fact that she was abetting the Power Properties Ltd to avoid the burden of providing a legally valid proof of termination of the agency agreement, and thus continue not fulfilling their obligations under the agency agreement exploiting the



Appellant's absence from the country and abetting the tenant in her coercive action.

- (ii) On August 1<sup>st</sup>, the EO extended the July 31<sup>st</sup> deadline to August 16<sup>th</sup> to help the tenant to continue living in the property as otherwise, with noncompliance to section 14[i] of MHHS disclosed in the July 14<sup>th</sup> inspection report warranted the issue of the EO's Order to declare the property unfit for human living as of August 1<sup>st</sup>, as the July 31<sup>st</sup> deadline had expired already, and also to order closure of my property for renting as on August 1<sup>st</sup> till compliance to section 14[i] of MHHS is done. This would have also warranted the EO's issue of an order to the tenant to vacate my property on August 1<sup>st</sup>. The EO also modified the noncompliance to section 14[i] of MHHS described in her July 14<sup>th</sup> inspection report to noncompliance to section 6[a, c] of MHHS in her Order dated August 9<sup>th</sup>, though she did not inspect the property after July 14<sup>th</sup>, to avoid ordering closure of my property for renting and thereby to help the tenant continue living in my property.
- (jj) The EO manipulated the AHS internal records and falsified it by deliberately suppressing and misstating the facts. She also did not place on AHS's internal record, my signed legal documents on the continued validity of the agency agreement [with Power Properties Ltd.] that I couriered to her, and other relevant correspondence in her possession which I emailed to her. Instead, she placed only the Agent's notice of termination of the agency agreement. [AHS Exhibit Pages AHS 085, and AHS 087]. She was evasive in her testimony to my cross-examination questions on this issue and she did not provide any convincing justification for her above act and why she did not correct the record based on facts. She confirmed, during her testimony, receipt of my emailed legal document attachment and the couriered original legal document.
- (kk) The statements made by the EO in her emails and her responses to my emails addressed to my Agent and tenant prove her act of abetting my Agent and the tenant's coercive acts to make me manage or find another agent to manage my property, and to obtain my approval for the tenant's unfair and unjustified use of the hot tub which is not included in the list of amenities in the Tenancy lease agreement, or to force me agree to the unjustified \$500 per month rent reduction demand by the tenant. [My Exhibits 24, 29, 32]. AHS's CSR Full Detailed Report on page AHS 085 of AHS Disclosure documents does not include any mention on the hot tub leakage or the wall condition around the spiral staircase.
- (ll) Facts submitted clearly prove that:
  - i. The EO's act and statements made by her suggest a reasonable apprehension of bias, such that the Order may be based upon considerations other than those mandated by the Act and the regulations.
  - ii. The Executive Officer has exceeded her limit in exercising or abused her authority and power under the Act.

- (mm) The tenant's testimony was full of contradictions and false statements and did not pertain to any occurrence during the EO's inspection on July 14, 2023, thus it is only hearsay and to be ignored.
- (nn) Facts and arguments presented in my above closing submission clearly prove that:
  - i. The EO's Inspection Reports and Order, and the EO's testimony did not identify existence of any health hazard at the time of inspection on July 14, 2023 that was associated with any of the three violations.
  - ii. The EO's disclosure and Order on all three breaches are based on assumptions and hearsay and are not based on facts and evidence.
  - iii. The EO's disclosures in her inspection reports and Order are in error based on inaccurate findings and the grounds upon which the Order is based are false or inaccurate such that the Order is without proper basis in finding a violation under MHHS.
  - iv. The EO's act and statements made by her suggest a reasonable apprehension of bias such that the Orders may be based upon considerations other than those mandated by the Act and the regulations.
  - v. The EO has exceeded her limit in exercising, or abused her authority and power under the Act.
  - vi. The EO's testimony and tenant's testimony are not credible and should not be relied upon.
- (oo) In light of the above, I, the Appellant respectfully request the Panel:
  - i. to rescind and reverse the Order of the Executive Officer dated August 9, 2023 in its entirety pertaining to all the three breaches and render justice.
  - ii. to order/direct the AHS EO to not to register the Order on the title of my property.
  - iii. to order the AHS EO to correct the AHS records on my property to reflect the truth of the matter.

### **Submissions of the Respondent**

[40] The Respondent's submissions are summarized as follows:

- (a) The Appellant does not appear to contest the EO's observations, only that the tenant should pay for repairs.
- (b) The Appellant has an obligation to comply with the Act as a landlord.
- (c) During the inspection completed on July 14, 2023, the EO noted conditions related to the kitchen sink plumbing, the wall requiring repair and issues with the in-home hot tub.

- (d) From July 17 through August 8, 2023, the EO communicated with the tenant, the Appellant and the property management company [Power Properties Ltd.] and confirmed the property management company had withdrawn its services.
- (e) The Order prepared August 9, 2023 that was sent to the tenant and the Appellant directed that the required work be done by August 16, 2023.
- (f) The Appellant stated that the right hand side of the kitchen sink works and therefore the MHHS requirements are met and the Order should be reversed. AHS stressed that, to be in compliance with the MHHS, all plumbing fixtures must work, and therefore the Appellant has no valid argument.
- (g) The Appellant submitted there is no damage to the wall or the tenant must repair it, which is irrelevant to the fact the wall must be repaired by the Appellant.
- (h) The Appellant stated the in-home hot tub is not part of the rental agreement and is empty so it should not be an issue to be repaired. AHS stated the interior plumbing lines and pump are required to be in operating condition.
- (i) AHS stated there is no merit to the Appellant's allegations that:
  - i. the EO responded to the complaint four weeks after the property management company was advised but before the Appellant was advised;
  - ii. the EO accepted the property management company's position that they were no longer representing the Appellant;
  - iii. the EO shows partiality to the tenant and the property management company;
  - iv. The EO ignored the terms of the tenancy agreement;
  - v. the EO has participated in the undue harassment and mental torture of the Appellant.
- (j) EOs can inspect public places, and standards are set in regulations to be complied with, and AHS is obligated to respond to complaints falling under the Act.
- (k) The EO acted impartially and issued the Order properly.
- (l) The EO is not obligated to consider any civil issues that may arise from the inspection.
- (m) Repair responsibility and compliance with the MHHS rests with the property owner.
- (n) The Act takes priority over the *Residential Tenancy Act* and the EO does not consider the tenant/landlord contract in determining whether an order is issued or not.
- (o) The only relevant testimony from the Appellant is that the home is rented and that he has not been at the home since the tenant took possession of the Premises.

- (p) Video and pictures submitted showed leaking from plumbing in the kitchen sink.
- (q) Videos and pictures provided during the hearing are confirmed as representing the conditions cited in the Order and the tenant video shows significant water leakage from the hot tub area into the basement and a further video shows water leaking from the pump to the basement floor.
- (r) The EO confirmed that she observed evidence of water damage to walls, floors and related structures surrounding the hot tub, but she did not see evidence of water leakage which, at the time of her inspection, the hot tub was empty of water. Water leaks have the potential to result in mould growth and damage to the property, potentially leading to a dangerous public health condition.
- (s) Draining the hot tub does not comply with the Order or the MHHS, as it requires that “all plumbing fixtures be serviceable and free from leaks”, therefore the hot tub either needs to be repaired or decommissioned.
- (t) Plumbing leaks and damaged walls are violations of the MHHS sections IV(6)(c) and III(5).
- (u) The EO confirmed pictures showing damage to the walls were taken by her at the time of her inspection, and the tenant also confirmed the wall damage.
- (v) The EO had reason to believe, based on her inspection and supported by the video and photographs, that the Premises was, and remains, in contravention of the Act and the MHHS. The tenant confirmed the required work has not been completed.
- (w) Given that the Appellant has not attended the home for an extended period, he has no first hand knowledge of the conditions being cited.
- (x) Any attempt to discount evidence of the EO and the tenant is an attempt to avoid the weight of evidence provided.
- (y) Evidence of the tenant and the EO is cogent, consistent and reliable and withstood numerous attempts by the Appellant to have the answers changed in his favour.
- (z) No evidence of impropriety on the part of the EO was presented.
- (aa) No contractual relationship between the Appellant and Power Property Management has a bearing on the Act or regulations and should be ignored.
- (bb) The Appellant is the sole registered owner of the Premises and is responsible for compliance with the Order.
- (cc) The Order should be confirmed.

## Analysis and Reasons

### *Should the Board confirm, reverse or vary the Order of an Executive Officer dated August 9, 2023?*

[41] For the reasons that follow, the Order is varied.

[42] The statutory framework that applies to rental premises in Alberta, and the obligations imposed on the owners of rental premises, is set out in the Act and the regulations. Section 62 of the Act gives an executive officer the discretionary power to issue an order after inspecting a public place.

**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.

[43] Section 1(ii) provides that a public place includes “accommodation facilities, including all rental accommodation”. Section 1(ee) 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”. An owner is defined in section 1(ff) as “the registered owner, and any person in the actual or apparent possession or control of land or a premises”.

[44] The Board’s authority to review decisions of a regional health authority is set out in the Act. Section 5(11) of the Act provides that:

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

[45] Pursuant to section 5(1) of the Act, a decision of a regional health authority includes “an order issued under section 62”.

[46] The MHHS states that its “primary objective is to protect and promote the health and well being of occupants of rental housing premises and of those who may reside in the immediate vicinity of such premises.”

[47] In addition to the legal obligations imposed on an owner by the Act and the regulations, section 16(c) of the *Residential Tenancies Act* states that:

The following covenants of the landlord form part of every residential tenancy agreement:

- (c) that the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.

[48] The Act also includes a paramountcy provision. Section 75 of the Act provides that:

Except for the *Alberta Bill of Rights*, this Act prevails over any enactment that it conflicts or is inconsistent with, including the *Health Information Act*, and a regulation under this Act prevails over any other bylaw, rule, order or regulation with which it conflicts.

[49] Regarding the Appellant's submissions that the tenant was responsible under the residential tenancy agreement between the Appellant and the tenant for completing, and/or the cost of completing the work required to be done in the Order, the validity or enforceability of the residential tenancy agreement is not before the Panel. In its decision of appeal 01-2018, the Board stated that whether damage to a public place is caused by tenants or is due to wear and tear is not relevant to an owner's requirement to be aware of and to comply with an owner's responsibilities under the Act and the regulations.

[50] Similarly, the termination of the Agency Agreement by Power Properties Ltd. is not before the Panel. Both the residential tenancy agreement between the Appellant and the tenant, and the Agency Agreement between the Appellant and Power Properties Ltd., are private contractual matters between the Appellant, as the owner of the Premises, and the tenant, and Power Properties Ltd. Any disputes the Appellant has with the tenant and Power Properties Ltd. are not within the jurisdiction of the Board.

[51] After considering the documents provided by the Parties, the Panel finds that the Appellant was the registered owner of the Premises at the time the EO issued the Order, and therefore the Appellant is responsible for ensuring the Premises comply with the Act and the regulations. As noted above, the statutory framework that applies to rental premises in Alberta clearly sets out the obligations imposed on the owners of rental premises. As the owner of the Premises, the Appellant is required to bring the Premises into compliance.

[52] The Appellant cited a previous decision of the Board from Appeal 05-2019 to argue that in order for something to be considered a violation under the Act, the regulations or the MHHS, a health hazard must be identified. The Panel does not agree. With respect to the Board's reliance on precedent, Rule 2.3 of the PHAB Rules of Procedure provides that the Act grants the Board significant discretionary powers, and the Board recognizes that over time, its prior decisions have developed into a useful benchmark which may indicate how the Board will view certain types of appeals. The Board further recognizes that the appeals before it are highly fact specific and accordingly, the Board must decide each appeal before it on an individual basis, based on the Record of Proceedings.

[53] Regarding this appeal, section 62(1) of the Act clearly provides that the EO may issue a written order in accordance with section 62 if the EO has reasonable and probable grounds to believe, based on an inspection of the Premises, that a nuisance exists in or on the Premises, or that the Premises or owner of the Premises or any other person is in contravention of the Act or the regulations. The Panel accepts the photo and video evidence, and the oral testimony of the tenant and the EO, which confirm the existence of the leaks, and the Panel found that evidence to be believable and valid to confirm the contravention of the Act and regulations. The Appellant did not provide any compelling evidence to challenge the existence of the contraventions of the Act, the regulations or the MHHS noted in the Order.

[54] The Panel also finds that the EO acted within its authority when it inspected the Premises and issued the Order. The Act authorizes EOs to inspect public places for the purpose of determining the presence of a nuisance or determining whether the Act and the regulations are being complied with. In this Appeal, the EO responded to a complaint dated July 14, 2023 that the sink was leaking. The Order indicated that the EO's inspection disclosed breaches of the Act, the regulations, and the MHHS namely, the leaking sink, evidence of water leaking from the hot tub into the basement, and the wall adjacent to the spiral staircase was in disrepair. The Panel also finds that the EO had reason to believe, based on her inspection, which was supported by the video and photos, that the Premises was, and remained, in contravention of the Act and the MHHS.

[55] Based on the above findings, the Board varies the Order as follows:

- a) The Appellant shall repair the plumbing under the kitchen sink to ensure it is no longer leaking. The "kitchen sink" shall include the left and right side sinks, the garburator, and all plumbing associated with the kitchen sink and garburator.
- b) The Appellant shall repair the plumbing for the hot tub and all hot tub components to ensure it is no longer leaking. Until such time that the Appellant completes these repairs to the satisfaction of an AHS inspector, and meets all appropriate City of Calgary safety, licencing and building codes and standards, the hot tub and all hot tub components shall be decommissioned and shall remain decommissioned. AHS and the Appellant shall work with the appropriate City of Calgary authorities to ensure that the hot tub meets all required safety, licencing and building codes and standards.
- c) The Appellant shall repair and refinish the wall next to the spiral staircase.

[56] The Order as varied above 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: March 6, 2024**