

**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 November 10, 2021**

PANEL: Kevin Kelly, Chair  
Vicki Wearmouth, Member  
David Rolfe, Member  
Paul M. Bourassa, Member  
Dr. Theresa Chika-James, Member

BETWEEN:	)	
	)	
	)	
Sherry Markham	)	Laura-Marie Berg,
	)	Calgary Legal Guidance,
(Appellant)	)	for the Appellant
	)	
- and -	)	
	)	
ALBERTA HEALTH SERVICES	)	
	)	
(Respondent)	)	Kyle Fowler,
	)	Alberta Health Services,
	)	for the Respondent
	)	
	)	
	)	
	)	Heard: April 20 and May 4, 2023
	)	
	)	
	)	
	)	
	)	

---

## DECISION AND REASONS FOR DECISION

---

### Introduction

[1] This is an appeal (the “Appeal”) to vary the order of an Alberta Health Services (“AHS”) Executive Officer (the “Order”), which ordered that the housing premises located in Calgary, Alberta, and municipally described as 6140 Madigan Drive NE, Calgary, Alberta, (the “Premises”), be closed for tenant accommodation purposes, and be vacated by all occupants on November 12, 2021, as the Premises were unfit for human habitation. The date to vacate was subsequently amended verbally to November 26, 2021.

[2] The Order was provided orally to the Appellant and the registered owner on November 5, 2021.

[3] The Order was provided in writing to the registered owner and to the manager of the Premises on November 10, 2021. The Appellant was provided the Order in writing on November 23, 2021.

[4] The Appellant’s notice of appeal (the “Notice of Appeal”) sought to vary the vacate date in the Order for the Premises from November 12, 2021, to December 1, 2021.

[5] The appeal hearing (the “Appeal Hearing”) took place before the Public Health Appeal Board (the “Board”), comprising a panel of five members (the “Panel”), via video conference on April 20 and May 4, 2023.

### Background

[6] On December 23, 2021, the Board received from Sherry Markham (the “Appellant”) the Notice of Appeal (the “Notice of Appeal”), seeking to vary the Order - Closed for Tenant Accommodation, Order to Vacate.

[7] The Premises at issue in the Appeal is a single detached dwelling with three separate units, consisting of the main floor unit, occupied by the Appellant, and two basement suites.

[8] The registered owner of the Property is Bipasha Mondol (the “Landlord”). At all material times the Property was managed by Samiran Roy. Bipasha Mondol and Samiran Roy are not parties to the Appeal.

[9] On January 6, 2022, the Panel considered whether it should accept to hear the Appeal as the Notice of Appeal was received beyond the 10 day period within which to appeal an order as outlined in the *Public Health Act* (the “Act”).

[10] On January 10, 2022, the Panel sent a decision letter to the parties declining to hear the Appeal based on the Board determining that it did not have the mandate to grant the remedy the Appellant was seeking and due to the Notice of Appeal being filed beyond the 10 day period.

[11] On April 25, 2022, the Panel provided to the parties its detailed written decision dated April 22, 2022, declining to hear the Appeal (the “Decision to Dismiss the Appeal”).

[12] After the Panel issued its January 10, 2022 decision letter the Appellant made a complaint to the Alberta Ombudsman regarding the Board’s decision to decline to hear the appeal.

[13] On June 29, 2022, after the Alberta Ombudsman concluded its investigation of the Appellant’s complaint and provided its decision to the Board, in which the Decision to Dismiss the Appeal was found to be administratively fair.

[14] On July 7, 2022, the Appellant brought an originating application to the Court of Queen’s Bench for judicial review of the Decision to Dismiss the Appeal.

[15] Following discussions between the Board’s legal counsel and the Appellant, an agreement was reached whereby the judicial review application would be discontinued if the Board agreed to hear the Appeal.

[16] On January 3, 2023, the parties filed a consent order at the Court of King’s Bench (the “Consent Order”), which noted that the Board agreed to hear the Appeal and ordered, among other things, that the January 10, 2022 decision letter and the Decision to Dismiss the Appeal be vacated, and the judicial review application be discontinued.

[17] Paragraph 4 in the Consent Order contained a list of issues (the “List of Issues”) to be heard in the Appeal.

4. The issues to be considered in the appeal of Sherry Markham of the Order to Vacate issued by the Executive Officer of Alberta Health Services before the Public Health Appeal Board shall include the following:

- (a) Did the Executive Officer have reasonable and probable grounds to issue a Closed for Tenant Accommodation - Order to Vacate order (the "Order") issued orally on November 5, 2021, and in writing on November 10, 2021?
- (b) Did the conduct of the Executive Officer, in determining to issue the Order, impact the discharge of their statutory duties?
- (c) Was there unacceptable delay in service of a copy of the written order to vacate on Sherry Markham?
- (d) In exercising discretion under the *Public Health Act*, should the Executive Officer have extended the vacate date and enforcement of the Order to December 1, 2021, or later?
- (e) Having regard to the notice requirements in section 62 of the *Public Health Act*, was the form of written order adequate?

- (f) Having regard to all the above noted issues, should the Order have been confirmed, reversed, or varied?

### **Preliminary Matters**

[18] On April 20, 2023, the Appeal Hearing commenced. At the outset of the Appeal Hearing, the Respondent brought an application to:

- (a) dismiss the Appeal on the basis it was moot;
- (b) frame the issues; and
- (c) exclude certain evidence.

[19] Also, the parties could not agree on whether “shall include” in paragraph 4 of the Consent Order was limited to only the List of Issues for the Board to consider.

[20] After considering the parties’ submissions regarding the Respondent’s application, including the test for determining whether an appeal is moot as defined by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342, the Panel decided that:

- (a) the Appeal is not moot and should be heard by the Panel;
- (b) the Appeal would be restricted to the six issues delineated in the List of Issues; and
- (c) the parties would be allowed to speak to events leading up to and including November 28, 2021, being the date the Appellant was able to obtain alternative temporary accommodation.

[21] The Panel further directed the parties to provide written submissions on how “shall include” should be interpreted. The Panel considered the written submissions provided by the Appellant and the Respondent dated June 9, 2023, on their respective interpretation of “shall include”.

[22] The Appellant’s position was that “shall include” should be interpreted to include additional issues to those in the List of Issues, which the Appellant included in subsequent written submissions. Furthermore, the Appellant submitted that evidence of events that occurred after November 28, 2021, was relevant to the Appeal.

[23] The Respondent’s position was that “shall include” should be interpreted to include only the issues in the List of Issues. Furthermore, the Respondent submitted that evidence of events to be considered be restricted only until November 28, 2021.

[24] Following discussion, the Panel asked the parties to call their evidence and restrict it to events up to and including November 28, 2021.

[25] Furthermore, the Panel stated that the parties could make written submissions on the meaning of the words “shall include” in the Consent Order upon the conclusion of the hearing.

[26] The Panel held that the parties could only call evidence and make submissions on the six issues delineated in the List of Issues.

[27] On May 4, 2023, the Appeal Hearing continued and the parties concluded the presentation of their evidence.

[28] The parties were asked to provide their final submissions on June 9, 2023, which could include each parties' interpretation of "shall include" in the Consent Order.

[29] On June 9, 2023, the parties provided final written submissions on, among other things, the relief being sought by each party.

### **Timing of Appeal**

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

[31] On December 23, 2021, the Public Health Appeal Board Secretariat received the Notice of Appeal. While the Panel made the Decision to Dismiss the Appeal on the basis that it was well outside of the 10 day appeal period provided in section 5(3) of the Act and the Board had no mandate to grant the remedy, the Consent Order directed that the Decision to Dismiss the Appeal be vacated.

[32] Pursuant to the Consent Order, the Panel agreed to hear the Appeal.

### **Grounds of the Appeal**

[33] The Notice of Appeal is somewhat unique in that it does not appear to raise issues with the state of the Premises in terms of denying or disputing the alleged deficiencies. Rather, the Notice of Appeal raises issues regarding how the Executive Officer exercised his discretion given the vulnerable circumstances of the Appellant, and seeks to vary the vacate date in the Order for the Premises from November 12, 2021, to December 1, 2021.

### **Legal Issues**

[34] The List of Issues are:

- (a) Did the Executive Officer have reasonable and probable grounds to issue a Closed for Tenant Accommodation - Order to Vacate order (the "Order) issued orally on November 5, 2021, and in writing on November 10, 2021?
- (b) Did the conduct of the Executive Officer, in determining to issue the Order, impact the discharge of their statutory duties?
- (c) Was there unacceptable delay in service of a copy of the written order to vacate on Sherry Markham?
- (d) In exercising discretion under the *Public Health Act*, should the Executive Officer have extended the vacate date and enforcement of the Order to December 1, 2021, or later?
- (e) Having regard to the notice requirements in section 62 of the *Public Health Act*, was the form of written order adequate?

- (f) Having regard to all the above noted issues, should the Order have been confirmed, reversed, or varied?

### **Jurisdiction**

[35] There are no objections to the Panel's jurisdiction to hear the Appeal.

### **Documents/Exhibits**

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

- (a) **Exhibit A** – Notice of Appeal
- (b) **Exhibit B** – Appellant Disclosure
- (c) **Exhibit C** – Appellant Written Submissions
- (d) **Exhibit D** – AHS Written Disclosure
- (e) **Exhibit E** – AHS Revised Schedule A
- (f) **Exhibit F** – AHS Submissions

### **Submissions of the Appellants**

[37] The Appellant made a number of submissions, both in writing and orally.

[38] The Appellant acknowledges that the request to vary the vacate date in the Order will not change anything. However, the Appellant hopes that the Panel's review of the Order may change how AHS Executive Officers exercise their discretion in the future when ordering premises be vacated where occupants living in vulnerable circumstances are directly affected.

[39] The Appellant submits that the decision of the AHS Executive Officer to require the vacating of the Premises within seven days, and to take enforcement steps on November 23, 2021, and again on November 26, 2021, were all discretionary decisions that were unreasonable and improper.

[40] The Appellant submits that the verbal order given on November 5, 2021, followed by the Order and its enforcement, did not keep her and her family safe. Rather, it threw her and her family into a state of sustained crisis, that ultimately contributed to the deaths of the Appellant's son Cary and subsequently, his partner Allysha.

[41] The Appellant submits that the fact that the AHS Executive Officer viewed her and her family as "squatters and trespassers" suggests that he did not view them as persons deserving of protection under the Act.

[42] The Appellant requests that the Order be varied, changing the date for vacate from November 12, 2021, to December 1, 2021. In support of this position, the Appellant submits that the Panel should have regard to the List of Issues and a number of other issues, some of which include and can be summarized as follows:

- (a) Was the AHS Executive Officer's exercise of discretion under the Act reasonable given the Appellant's circumstances?
- (b) Was there unacceptable delay in service of a copy of the written order to vacate on the Appellant?
- (c) Having regard to the notice requirements in section 62 of the Act, was the form of written notice adequate?

### **Submissions of the Respondent**

[43] The Respondent made a number of submissions, both in writing and orally, concerning the List of Issues and a number of other issues, some of which include and can be summarized as follows:

- (a) The Order should be confirmed, as the AHS Executive Officer who inspected the Premises in question and issued the Order, did so reasonably, pursuant to their authority pursuant to the statutory requirements.
- (b) The issuance of the Order was based on the state of the Premises and the multiple violations constituting nuisances as defined in the Act that existed over a period of 11 months, which the Landlord failed address and showed no willingness to do so.
- (c) The Order was provided to the Appellant pursuant to the statutory regime and there is no minimum time frame for requiring a premises be vacated and for the Premises and the circumstances the AHS Executive Officer's discretion was reasonably exercised.
- (d) The Act does not prescribe the form of order being used and the and the form of order utilized by AHS conforms with the statutory requirements.
- (e) The Order was not made with bad faith or any improper purpose.

### **Findings**

[44] In November 2019, the Appellant began renting the main floor of the Premises with two of her three adult children, Matthew Markham and Rachel Markham.

[45] In mid-2020, the Appellant's third adult child, Cary Markham, began renting one of two basement suites in the Premises. Cary's partner, Allysha Cattlemen, moved into the suite with him in or about March of 2021. They had a month-to-month tenancy through an oral agreement with Samiran Roy and paid him \$600 cash each month.

[46] On December 2, 2020, the AHS Executive Officer Rikkie Ma responded to a request to attend at rental properties operated by the Landlord, which included the Premises, for the purposes of a joint inspection with, among others, the City of Calgary Safety Response Unit ("SRU") and City of Calgary Bylaw Services ("Bylaw").

[47] The AHS Executive Officer performed an inspection of the Premises pursuant to section 59 of the Act. The AHS Executive Officer recorded his observations in an inspection report which

noted more than twenty violations of the Minimum Housing and Health Standards (“MHHS”). The inspection report was subsequently provided to the Landlord via email on December 11, 2020.

[48] On July 14, 2021, the AHS Executive Officer conducted a reinspection of the Premises, together with Bylaw, SRU and Calgary Police Services (“CPS”). During the July 14, 2021 inspection, the AHS Executive Officer saw that no remedial work had been performed and observed additional violations of the MHHS to those previously documented. Of specific note was the lack of working smoke alarms and concerns regarding egress pathways. Inspection reports were subsequently created for each subunit at the Premises, as well as the common area, and provided to the Landlord via email.

[49] During the July 14, 2021 inspection, the AHS Executive Officer informed the occupants that a Work Order would be issued to the Landlord. Further, the AHS Executive Officer informed the tenants that if the work was not completed to address the violations of the MHHS at the Premises, it could be subject to a closure order, such as had been issued against another rental property of the Landlord. The AHS Executive Officer informed the tenants that a closure order would require the tenants to vacate the Premises and that they may want to seek alternative housing.

[50] Respecting the Landlord’s compliance history, the AHS Executive Officer had been monitoring two other properties at the relevant times, which were used by the Landlord for tenant accommodation purposes, municipally identified as 5227 Memorial Drive SE, and 5836 Memorial Drive NE. Like the Premises, the AHS Executive Officer attended at those premises for inspections, which resulted in orders issued under section 62 of the Act.

[51] Following the July 2021 Work Order, Samiran Roy made some repairs to the Premises but did not address the majority of deficiencies.

[52] In October 2021, Samiran Roy, advised the Appellant’s son, Cary, that he and Allysha could use the entirety of the downstairs as only one residential unit was permitted. He asked Cary to remove the remaining things left by prior tenants, and also to remove a stove from one of the downstairs units.

[53] Later in October 2021, Samiran Roy advised Cary that the basement unit was illegal and could no longer be occupied. Cary moved his belongings, along with those of Allysha, to the main floor level of the Premises, which was occupied by the Appellant and her other two adult children, Matthew and Rachel.

[54] On November 1, 2021, at Samiran Roy’s insistence, the Appellant paid her monthly rent in cash, even though the requested repairs were not carried out. Samiran Roy also advised the Appellant not to mention anything to the AHS Executive Officer about the lack of hot water in the Premises when an inspection was carried out later in the week.

[55] On November 5, 2021, the AHS Executive Officer and the Calgary Police Service, among others, attended the Premises for a reinspection. The AHS Executive Officer observed a continued lack of satisfactory work to address a number of the violations of the MHHS at the Premises as previously reported. Further, the AHS Executive Officer observed that the Appellant’s unit had



accumulated a significant volume of personal belongings and garbage, which made movement through it difficult, and blocked emergency egress pathways.

[56] The AHS Executive Officer told the Appellant about the conditions of the Order, including that that she and her family, as well as Cary's partner, Allysha, would have to vacate the Premises by November 12, 2021. The Appellant told the Executive Officer that she had nowhere else to go and, because she had paid the November rent, she had no funds available until the beginning of December 2021.

[57] On November 5, 2021, the AHS Executive Officer telephoned the Landlord to advise him of the Order.

[58] On November 10, 2021, a written copy of the Order was delivered via post to the Landlord.

[59] Following the Appellant being told about the Order, Ms. Markham's family went into a state of crisis, with her son Cary surviving a fentanyl overdose on November 13, 2021, and his partner Allysha attempting suicide on or about November 18, 2021.

[60] On November 16, 2021, the AHS Executive Officer received an email from Constable Hilary Jennings with CPS, informing the AHS Executive Officer that there had been an overdose at the Premises.

[61] A further reinspection of the Premises occurred on November 23, 2021, in conjunction with Bylaw, SRU and CPS attending as well. Upon the AHS Executive Officer attending at the Premises, the AHS Executive Officer learned that the Appellant and other tenants had not vacated it.

[62] On November 23, 2021, the Appellant was provided with a copy of the Order. The Appellant testified that in the Order, the date that she and her family were required to vacate was in the middle of page 11 of a 14-page single-spaced document.

[63] When the AHS Executive Officer attempted to have the Appellant vacate the Premises, he and the City of Calgary officials faced resistance and were told that the tenants would not leave. In response, the Appellant was granted an extension to Friday, November 26, 2021, to vacate the Premises.

[64] On November 26, 2021, the AHS Executive Officer returned to the Premises, along with CPS constable, and a number of City of Calgary officials. The CPS Constable advised the Appellant, and her three adult children that they had to leave the Premises, or they would be arrested.

[65] The Appellant again advised that they had nowhere to go, and asked for five more days until December 1, 2021, when she would have funds to go elsewhere. The Appellant's request for more time was denied and the Premises were subsequently boarded up.

[66] The Appellant tried to call homeless shelters but was advised that they were all full. The Appellant and her adult children spent several days (from about noon on November 26 to the

evening of November 28, 2021) living in tents in the backyard of the Premises. It was very cold, and they had no access to water or bathroom facilities.

[67] On or about November 28, 2021, the Appellant was able to borrow cash from a friend and secured a room at the Ambassador Inn in Calgary. The Appellant and her three adult children then moved from their tents in the backyard to the room at the Ambassador Inn.

### **Analysis**

[68] As to the List of Issue: *(a) Did the Executive Officer have reasonable and probable grounds to issue the Order?*

[69] When AHS Executive Officer Rikkie Ma testified concerning certain events surrounding the issuance of the Order, the Panel found him to be evasive and conveniently lacking in the recollection of certain events, while in other instances recollecting quite well. He seemed intent on addressing the Landlord's historic lack of inaction on making his properties habitable. Nonetheless, the AHS Executive Officer did have reasonable and probable grounds to issue the Order. Furthermore, and more importantly, however, the AHS Executive Officer confirmed in cross-examination that:

- (a) The date to vacate the Premises should have been December 1, 2021; and,
- (b) He normally works with the occupants to arrange a reasonable date to vacate, which he did not do in this instance.

[70] As to the List of Issue: *(b) Did the conduct of the Executive Officer, in determining to issue the Order, and in particular the Order to Vacate, impact the discharge of (his) statutory duties?*

[71] Based upon the evidence, the Panel finds that the AHS Executive Officer Rikkie Ma was aware, or should have been aware, that the Appellant and her family had no ability to move within seven days. Nonetheless, strictly speaking he did discharge his statutory duties.

[72] As to the Legal Issue: *(c.) Was there unacceptable delay in service of a copy of the written order to vacate on Ms. Markham?*

[73] The Order as written was adequate pursuant to the statutory regime. While it was issued to the Landlord in a timely manner, it was not issued in a timely manner to the Appellant who, as an occupant, was a person to whom the Order was directed as outlined in section 62(2) of the Act.

[74] AHS acknowledged in their submissions that the delay likely fails to recognize the requirements of the Act, in particular section 62(6), which requires a written version of the oral order be served as soon as is reasonably possible, and section 62(7), which requires an order be posted in a conspicuous place in the case of an oral order. The AHS Executive Officer did not post the written Order until several days after the oral order to the Landlord and Appellant and did not give the occupants a copy of the Order until he attended the Premises to evict them on November 23, 2021.

[75] As to the Legal Issue: *(d.) In exercising discretion under the Public Health Act, should the Executive Officer have extended the vacate date and enforcement of the Order to December 1, 2021, or later?*

[76] The evidence demonstrates that the Executive Officer Rikkie Ma was aware, or should have been aware, that the Appellant and her family had no ability to move within seven days and should have used his discretion to move the vacate date. The evidence shows that Mr. Ma did not exercise his discretion. The Panel agrees. Mr. Ma agreed that he normally works with occupants and the evidence shows that he did not.

[77] As to the Legal Issue: *(e.) Having regard to the notice requirements in section 62 of the Public Health Act, was the form of written notice adequate?*

[78] Strictly speaking the form of written notice was adequate despite the date by which to vacate was in the middle of page 11 in a 14-page, single-spaced document.

[79] As to the Legal Issue: *(f.) Having regard to all the above noted issues, should the Order have been confirmed, reversed, or varied?*

[80] Yes, the Order should have been varied and the date to vacate should be December 1, 2021.

### **Conclusion**

[81] The Act and its regulatory scheme exist to ensure Albertans residing in rental accommodations do so in a safe and healthy environment. The Panel recognizes the important role that AHS plays in protecting vulnerable occupants from unscrupulous landlords.

[82] In the Appeal before the Panel, the evidence is clear that the Landlord and manager, Samiran Roy, failed to act diligently in remediating the violations in the Order, permitting them to exist for a period of more than 11 months before the Premises were ordered to be vacated by the occupants and closed for tenant accommodation purposes. Samiran Roy even went so far to advise the Appellant not to mention anything to the AHS Executive Officer about the lack of hot water in the Premises.

[83] The numerous violations posed a risk to the Appellant and her family's health and safety. Lamentably, however, they were seemingly caught between an unscrupulous Landlord and AHS' duty to ensure Albertans residing in rental accommodations do so in a safe and healthy environment.

[84] The AHS Executive Officer has the discretion to deal with each situation on a case-by-case basis. This would include working with the Appellant and her family, who were the occupants directly affected, to agree on a reasonable vacate date, giving consideration to their circumstances as well as the seriousness of the violations cited in the Order.

[85] While the oral Order was given to the Appellant on November 5, 2021, the written Order, as matter of logic, was more detailed and precise, and the Appellant did not have it until November 23, 2021.

[86] Although tenant displacement is an unfortunate, but a recognized result of the statutory framework enacted by the Legislature, which provides that rental accommodations that do not meet the minimum standards may be closed for tenant accommodation purposes and occupants may be ordered to vacate, the interests of those directly affected, particularly those who are vulnerable, must be balanced and examined on a case-by-case basis.

[87] In the Appeal, the risk posed to the Appellant and her family's health and safety was arguably less so if they had been able to remain in the Premises until December 1, 2021, instead of being evicted on November 26, 2021, and residing in tents in the Premises' backyard during in winter, with no heat or running water.

[88] The Panel agrees that the vacate date in the Order should have been extended to December 1, 2021, and we rely on the testimony of AHS Executive Officer Rikkie Ma in reaching that decision.

[89] The Panel recognizes the Board has no authority to direct the form of order, however as a general practice:

- (a) occupants directly affected by an AHS order should receive something written at the time they receive the oral notice to vacate, which could be as simple as the AHS Executive Officer's business card and on the back write "Order to Vacate is December 1, 2021"; and,
- (b) critical dates in the Order to Vacate should be featured prominently on the first page.

[90] For the above reasons the Panel varies the Order of the Executive Officer as follows:

- (a) The Executive Officer's order and direction number 1 found on page 11 of the Order shall be revised to read:
  - 1. That the occupants vacate the above noted premises on or before December 1, 2021.
- (b) The order and direction number 2 on page 11 of the Order remains unchanged.

--Original Signed--  
Kevin Kelly, Chair  
On behalf of the Hearing Panel of  
the Public Health Appeal Board

**Date: November 8, 2023**