

**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 749683 ALBERTA  
LTD. OF THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY  
ALBERTA HEALTH SERVICES ZONE 4, EDMONTON, ALBERTA  
DATED DECEMBER 11, 2017

**DECISION OF THE BOARD**

**Hearing date**

April 12, 2018

**Appearances**

For the Appellant:

Sat Khatri, Advocate for Jagtar Deol  
Jagtar Deol, Sole Director/Shareholder of 749683 Alberta Ltd. (the "Owner")

For the Respondent:

Linda A. Svob, Counsel for Alberta Health Services ("AHS")  
Meaghen Allen, AHS Executive Officer

Sitting for the Board:

Denis Lefebvre, Chair  
Wendy Lickacz, Vice-chair  
David Rolfe, Member of the Board  
Barbara Rocchio, Member of the Board

**Board Decision**

[1] The Board confirms the Order for the reasons provided below.

**Background**

[2] 749683 ALBERTA Ltd. owns a multi-unit four-storey apartment building (the "Building") located at 9612-156 Street, Edmonton, Alberta.

[3] There is a significant history of AHS working with the Owner to address various issues arising at the Building. On April 17, 2017, AHS sent the Owner a letter raising concerns with non-compliance with housing standards with respect to certain units in the Building. The letter asked that vacant units not be rented until they have passed an AHS inspection.

[4] Throughout the summer and fall of 2017, further communications and inspections occurred at the Building. Other non-AHS agencies became involved with the Building, including Occupational Health and Safety and the Edmonton Fire Department.

[5] On November 10, 2017, a compliance review was held with AHS and the Owner to discuss compliance with the *Public Health Act* (the “Act”) and its regulations. Mould and water damage issues were specifically discussed with the Owner.

[6] On December 1, 2017, AHS Executive Officer, Meaghen Allen (“Allen”), attended at suite 206 of the Building (the “Premises”) to conduct an inspection (the “Inspection”) following a complaint received on November 28, 2017.

[7] Following the Inspection, Allen issued a verbal order, followed by a written order dated December 11, 2017 (the “Order”).

[8] The Order required the Owner to engage the services of an environmental consultant and undertake repairs to the Premises (the “Work”) in order to bring the Premises in compliance with housing standards. The Order further stipulated that, until such time as the Work is completed, the Premises would remain closed for tenant accommodation purposes.

[9] On January 9, 2018, the Appeal Secretariat received the Owner’s appeal dated January 5, 2018 (the “Notice of Appeal”).

[10] The Appellant disagrees with the Order in that Allen did not have valid reasons to issue the Order. Specifically, he states that:

- (a) The deficiencies are trivial and there is no reason to have to require the Premises be vacated or remain vacated for tenant occupation;
- (b) The tenant caused the damage or the damage is normal wear-and-tear;
- (c) The tenant is responsible for the deficiencies and the landlord has no control over the tenant’s actions;
- (d) Repairs were undertaken for the premises but repairs sometimes take more time than anticipated; and
- (e) Allen unfairly targeted the Owner. That is, the Owner is being “singled out” and “picked on and punished” over these deficiencies. The Appellant also feels he was discriminated against based on race.

[11] On or about February 7, 2018, The Appellant received an asbestos report, which was prepared for the Premises by Tritec Environmental. As such, the Owner was provided with

information and the steps required to complete the Work safely; that is, following appropriate environmental hazards protocol.

[12] As at the date of this Hearing, a final inspection has not yet occurred for the Premises.

### **Timing of Appeal**

[13] 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.

[14] The Health Appeal Board Secretariat received the Notice of Appeal on January 9, 2018. The Appellant has provided a Canada Post receipt showing that he received the Order on January 4, 2018. As such, the Board accepts that the Notice of Appeal was filed on time.

[15] There were no objections from AHS.

### **Jurisdiction**

[16] There were no objections to the Board's jurisdiction to hear the Appeal.

### **Documents/Exhibits**

[17] Prior to the commencement of the hearing, the following documents were entered as exhibits:

- (a) Exhibit 1: the Order dated December 11, 2017
- (b) Exhibit 2: the Notice of Appeal
- (c) Exhibit 3: AHS Binder of Evidence
- (d) Exhibit 4: Appellant's Document of Evidence
- (e) Exhibit 5: Appellant's Asbestos Report
- (f) Exhibit 6: Canada Post Receipt about when Appellant received the Order
- (g) Exhibit 7: Occupational Health and Safety ("OHS") Contact Report

### **Issues**

[18] Based on the grounds of the Appeal per paragraph [10], the issues on this Appeal for consideration by the Board are as follows:

- (a) Whether deficiencies are serious enough as to warrant an order for the Premises to be vacated for tenant occupation; and
- (b) Whether the damage caused by the tenant are the responsibility of the Owner and subject to an issuance of an order under the *Act* and the regulations.

### **Other issues raised by the Appellant**

[19] The Appellant believes that Executive Officer, Allen, discriminated against him because he is a visible minority. He also stated that Allen persecuted and harassed him -that he was being “singled out” and “picked on and punished”.

[20] The Board cannot consider questions of discrimination, unprofessional conduct or harassment, as it does not have jurisdiction to do so. As such, the Board will not comment on these issues.

[21] The Appellant also raised issues regarding other units in the Building. However, as was explained to the Appellant, this Appeal deals with the matters raised in the Order as it pertains specifically to the Premises and no other units or other aspects of the Building for that matter.

### **Submissions of the Appellant**

[22] The Appellant explained those things that needed to be repaired, including an emergency water leak. He stated that he promptly repairs those things that need to be repaired and replaces those things that need replacing, including windows and smoke detectors. He further stated that he does not cut corners and works very hard to properly maintain the Building.

[23] Mr. Khatri, the Appellant’s advocate, stated that the Appellant tried to comply with what AHS requires. He further stated that the Premises were repaired and there were no traces of asbestos in the ceiling. A letter dated February 7, 2018 was presented to the Board (the “Letter”). The Letter was never provided to the Respondent. In fact, this is the first time that the Respondent and the Board had seen the Letter. The Chair adjourned for a short recess in order to allow both the Respondent and the Board to review the Letter. The Letter was entered as Exhibit 5. According to the Letter, drywall samples were taken from the Premises and no asbestos was found in the ceiling drywall. However, asbestos was present in the kitchen closet and behind the stove, which requires appropriate abatement protocols.

[24] Mr. Deol presented Ms. Angela LaPierre as his witness. She is the Building manager and assists Mr. Deol as required. Ms. LaPierre submitted that Mr. Deol has been doing everything that he possibly can to maintain the Building and provided an overview of the more recent repairs. She maintains that the Notice to Vacate was never posted to the Premises’ door. She also stated that the repairs to the Premises were completed. The Board asked Ms. LaPierre to review the Order and point to any errors or inaccuracies as at the time the Order was issued. Ms. LaPierre did not point to any errors or inaccuracies. She did explain that the tenant in the Premises was moved to another suit and the Work was started on the December 15, 2017.

[25] In his final submissions, the Appellant argued that Allen was upset with him that he had appealed the Order. The main theme of the Appellant’s narrative, throughout, was that he was unfairly targeted because of frequent inspections and was a victim of discrimination and harassment.

## Submissions of the Respondent

[26] The Respondent provided an overview of the history of Building and numerous inspections over the years, which revealed violations of the housing regulations. The Owner was instructed by AHS to cease renting vacant suites until they were inspected by AHS. A letter dated April 17, 2017 was sent to the Owner advising of the same.

[27] On April 25, 2017, a full Building inspection was conducted by Executive Officer, Rebecca Johnson, with other members of Project Watch. Project Watch is a multi-agency task force that is comprised of AHS, Occupational Health and Safety (“OH&S”), the Fire Department, and any other agency that has a file history with the Building. The agencies work as a team and will attend inspections done by another agency. Each of those agencies may proceed with their own follow-up inspections as needed. It was explained that once a multi-family building is part of Project Watch, inspections can occur as frequently as every two to three months, depending on issues identified.

[28] A report regarding the April 25, 2017 inspection was provided to the Owner. The said report dealt with the Premises in particular and listed a number of violations including:

- (a) Walls/ceilings disrepair in the washroom;
- (b) Smoke alarm not operational;
- (c) Mouse infestation; and
- (d) Mould contamination.

[29] On July 21, 2017, AHS inspected the Premises. While some of the work related to the April 25, 2017 inspection was completed, additional/new violations were found.

[30] On October 19, 2017, OH&S and the Edmonton Fire Department each issued a report following an inspection of the Building as part of Project Watch. This report is significant, as it identified the possibility of the presence of asbestos. Accordingly, the Owner would be required to ensure that contractors who perform any work in the Building was made aware of potential presence of hazardous materials. This is usually done via a hazardous materials assessment, which is ultimately the responsibility of the Owner. Allen explained that buildings constructed prior to 1990 likely contain asbestos and, as such, AHS would require asbestos testing if any work requires the removal of wall and/or ceiling materials.

[31] On November 10, 2017, a compliance review meeting was held between AHS and the Owner. AHS wanted to have a meeting with Mr. Deol to discuss non-compliance issues and what AHS’s expectations were vis-à-vis issues identified. A summary letter dated December 4, 2017 (the “December Letter”) was provided to the Owner, which outlined action items. The December Letter also stated that Executive Officer, Rebecca Johnson, may inspect the Building at any time to assess progress of the Building renovations as well as to confirm ongoing compliance.

[32] Prior to the December Letter going out, AHS received a complaint (the “Complaint”) from the tenant of the Premises on November 28, 2017. The tenant stated that he had been renting for

approximately a year-and-a-half. The tenant further stated that mould was growing and was concerned that asbestos may be present, but the Landlord would not do anything.

[33] In response to the Complaint, Allen attended at the Premises and completed an inspection, which resulted in the issuance of the Order. No further formal inspections were conducted with respect to the Premises after December 1, 2017. The Respondent explained that the next step following confirmation that the Work is completed is to have an environmental assessment/report completed (indicating that all hazardous materials have been properly dealt with and that the air quality is up to acceptable standards) and submit the report to AHS. AHS would then conduct an inspection of the Premises to determine if the Premises meet the standards pursuant to the housing regulations.

[34] The Respondent submits that the Act authorizes AHS to inspect the Premises to ensure compliance with the Act and the regulations. The purpose of the Act is to protect the public, including tenants who occupy rental premises. The Respondent further submits that the Appellant has a positive obligation to comply with the Act and its regulations and provided the case of *R. v. Wholesale Travel Group Inc.* [1991] 3 SCR 154 at p. 229 in support of the Respondent's submission. Accordingly, the Order was properly issued and should be confirmed.

### **Analysis/Reasons**

[35] Conduct of an Executive Officer of AHS is not reviewable by this Board unless said conduct is in relation to the exercise of authority pursuant to the Act. That is to say, did the officer properly exercise that authority and issue an Order consistent with the facts and the relevant provisions of the Act and the regulations?

[36] The Premises is a rental accommodation and falls within the definition of "public place" per s. 1(ii)(viii) of the Act.

[37] Since the Premises is a public place, AHS is authorized to inspect the Premises pursuant to s. 59 of the Act, which reads as follows:

#### **Inspection of place other than private dwelling**

**59(1)** An executive officer may inspect any public place for the purpose of determining the presence of a nuisance or determining whether this Act and the regulations are being complied with.

(2) An executive officer making an inspection under subsection (1) may

- (a) at any reasonable hour enter in or on the public place that is the subject of the inspection;
- (b) require the production of any books, records or other documents that are relevant to the purpose of the inspection and examine them, make copies of them or remove them temporarily for the purpose of making copies;
- (c) make reasonable oral or written inquiries of any person who the executive officer believes on reasonable grounds may have information relevant to the subject-matter of the inspection;
- (d) inspect and take samples of any substance, food, medication or equipment being used in or on the public place;
- (e) perform tests, take photographs and make recordings in respect of the public place.



(3) Where an executive officer removes any books, records or other documents under subsection (2)(b), the executive officer shall

- (a) give to the person from whom the items were taken a receipt for the items, and
- (b) forthwith return the items to the person from whom they were taken when they have served the purpose for which they were taken.

[38] Following an inspection, an Executive Officer of AHS may issue an order pursuant to s. 62 of the Act, which reads as follows:

**Order**

**62(1)** Where, after an inspection under section 59 or 60, the executive officer has reasonable and probable grounds to believe that a nuisance exists in or on the public place or private place that was the subject of the inspection or that the place or the owner of it or any other person is in contravention of this Act or the regulations, the executive officer may issue a written order in accordance with this section.

(2) An order shall be served on the person to whom it is directed and shall set out the reasons it was made, what the person is required to do and the time within which it must be done.

(3) Where the order is directed to a person who is not the registered owner, a copy of it shall also be served forthwith on the registered owner.

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

- (a) requiring the vacating of the place or any part of it;
- (b) declaring the place or any part of it to be unfit for human habitation;
- (c) requiring the closure of the place or any part of it;
- (d) requiring the doing of work specified in the order in, on or about the place;
- (e) requiring the removal from the place or the vicinity of the place of anything that the order states causes a nuisance;
- (f) requiring the destruction of anything specified in the order;
- (g) prohibiting or regulating the selling, offering for sale, supplying, distributing, displaying, manufacturing, preparing, preserving, processing, packaging, serving, storing, transporting or handling of any food or thing in, on, to or from the place.

(5) Where the delay necessary to put an order under this section in writing will or is likely to increase substantially the hazard to the health of any person, the executive officer may issue the order orally.

(6) As soon as is reasonably possible after issuing an oral order under subsection (5), the executive officer shall serve a written version of the order in accordance with subsections (2) and (3).

(7) Where an order is issued under subsection (4)(a), (b) or (c), the executive officer shall ensure that a copy of the order, or in the case of an oral order, a notice of the requirements of the order, is posted in a conspicuous place at, on or near the public place or private place to which the order relates.

(8) A regional health authority shall maintain a record of all orders issued under subsection (4)(a), (b) or (c) and shall make the record available for inspection by the public during the business hours of the main office of the regional health authority.

(9) If, in the course of an inspection under this Act, the executive officer is of the opinion that a condition of emergency exists due to the existence of a nuisance, the executive officer may,

notwithstanding anything in this Act, forthwith take any steps the executive officer considers appropriate to remove or lessen the nuisance.

[39] Following the Complaint from the tenant of the Premises, Allen inspected the Premises and issued the Order.

[40] The Board finds that Allen properly exercised her authority and issued an appropriate order, consistent with the facts and the relevant provisions of the Act.

[41] The Board also finds that, based on the facts and evidence presented at the Appeal Hearing and the relevant provisions of the Act and the Regulations, the deficiencies in the Premises are serious enough as to warrant an order for the Premises to be vacated for tenant occupation.

[42] During questioning by the panel, and when asked to focus squarely on the Order and the Premises, Mr. Deol admitted that he did not disagree with the Order and confirmed that he had completed the repairs and/or would complete the repairs as required. While AHS has not yet inspected the Premises to determine if the Work meets Minimum Housing and Health Standards, it is clear that Mr. Deol had or has every intention of complying with the Order. In fact, Mr. Deol testified that he had already completed all of the Work before he received the Order.

[43] Whether the tenants cause damage or whether the damages are due to wear-and-tear is irrelevant to the requirements for the Owner to be aware of his responsibilities under the Act and the regulations and to comply with the same. The primary purpose of the Act 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” cannot be over-stated.


### **Other Issues**

[44] The Board did state that it would not deal with the other issues raised by the Appellant at paragraphs, 19 and 20 above. However, the Board thinks it is important to note that the Building remains part of Project Watch, which means that it will be frequently inspected, not only by AHS, but by other participating agencies as well, including OH&S and the Fire Department. It should not be surprising then, that AHS, be it Allen or any other Executive Officer, will attend at the Building on a regular basis. This is part of the AHS’s responsibilities pursuant to the Project Watch program as well as the Executive Officer’s responsibilities under the Act.

### **Conclusion**

[45] The Board hereby confirms the Order.

[46] The Order is still in effect until such time as AHS rescinds the Order in accordance with the Act.

  
\_\_\_\_\_  
Denis Lefebvre, Chair  
On behalf of the Public Health  
Appeal Board

**Date: June 10, 2018**