

PUBLIC HEALTH APPEAL BOARD

IN THE MATTER OF THE PUBLIC HEALTH ACT,
CHAPTER P-37, R.S.A. 2000
AND ITS REGULATIONS

IN THE MATTER OF AN APPEAL TO
THE PUBLIC HEALTH APPEAL BOARD
BY CHANDRA KANTA
OF THE EXECUTIVE OFFICER'S ORDER
ISSUED BY ALBERTA HEALTH SERVICES
ZONE 4 EDMONTON
DATED MAY 13, 2014
HEARING HELD JUNE 24, 2014

Appearances:

Ms. Chandra Kanta, Owner/Appellant
Ms. Erin Birney, Counsel for Alberta Health Services/Respondent

Witnesses:

Ms. Chandra Kanta, Owner
Ms. Rebecca Johnson, Executive Officer with Alberta Health Services

Board Decision:

The Executive Officer's Order dated May 13, 2014 is confirmed.

A. INTRODUCTION

An Executive Officer's Order (the "Order") dated May 13, 2014 was issued to the Owner with respect to the Premises located at Basement, 11734 - 87 Street, Edmonton, Alberta (the "Premises"). The Order is attached as Appendix A.

The Order directed the occupants to vacate the Premises immediately. It further ordered that, until such time as the work set out in the Order was completed to the Executive Officer's satisfaction the Premises were to remain vacant and secure from unauthorized entry.

The Order was issued pursuant to s. 62 of the *Public Health Act* (the “Act”) and a Notice of Health Hazard was registered on the title to the Premises on May 15, 2014 pursuant to s. 64 of the Act.

The Premises were occupied on May 8, 2014 when the Executive Officer inspected the Premises; however, the occupant has since vacated the Premises.

The Appellant was verbally informed of the Order on May 9, 2014. The written Order was completed and sent by Canada Post registered mail to the Appellant on May 13, 2014 and picked up by the Appellant on May 19, 2014.

The Notice of Appeal, dated May 26, 2014, was received by the Board on May 27, 2014.

This appeal was heard on June 24, 2014 at ATB Place, South Tower, 10020 100 Street N.W., Edmonton, Alberta.

B. TIMING OF THE APPEAL

The *Public Health Act*, s. 5(3) requires the Appellant to serve notice of appeal within 10 days after receiving notice of the Order. The Notice of Appeal was served on the Board 18 days after the Appellant received verbal notice of the Order and eight days after receiving the written Order. The Notice of Appeal was entered in to evidence as Exhibit B.

If the Notice of Appeal is not served within the 10 day time frame the Board may extend the time within which an appeal may be taken if it considers it appropriate to do so. There was no objection from Alberta Health Services to extending the time for receiving the Notice of Appeal. The Board finds it is appropriate to extend this time period.

C. JURISDICTION OF THE BOARD

There were no objections to the Board’s jurisdiction to hear this appeal.

D. FACTS

The facts as set out in the Introduction are not disputed by the parties.

The Board finds the following facts set out in documents submitted by the Respondent provide relevant background to this appeal:

- July 15, 2008: Unfit for Human Habitation Order issued;
Order to Vacate issued;
Notice of Health Hazard registered against the Premises;

- April 26, 2010: Rescind Notice of the July 15, 2008 Unfit for Human Habitation Order issued;
- August 12, 2011: Unfit for Human Habitation Order issued; Order to Vacate issued;
- August 15, 2011: Notice of Health Hazard registered against the Premises;
- November 2, 2011: Rescind Notice of the August 12, 2011 Unfit for Human Habitation Order issued.

E. ISSUES

1. Should the Order be reversed or varied since the Owner, verbally and in her Residential Tenancy Agreement with the Tenant of the residential property, municipally described as 11734 – 87 Street, Edmonton, Alberta and which included the basement area (the Premises), specified the basement was to be used for storage only and there was to be absolutely no sleeping in the basement;
2. Should the Order be reversed now that the Owner has secured the basement with a lock; and
3. Should the Board remove the Notice of Health Hazard from the title of the Premises?

F. APPELLANT'S SUBMISSION

The Appellant provided a written submission entered in to evidence as Exhibit C that contained the following documents: Reasons for Notice of Appeal prepared by the Owner; Letter from Tenant; Letter from Tenant's Caretaker; Notice of Health Hazard; and, Residential Tenancy Agreement.

On April 1, 2014 the Appellant (owner) rented the upstairs of the house to the current tenant and had informed the tenant the basement could only be used for storage. The Appellant had also noted this restriction on the Residential Tenancy Agreement signed by both the Appellant, as Landlord, and the Tenant. It was the Appellant's submission that in taking these precautions, she had complied with the conditions of the Order to ensure the Premises would not be occupied and therefore, were grounds to have the Order reversed.

The Tenant has a Caretaker for the Premises who looks after the business the Tenant is operating in the house.

When the Appellant asked the Tenant why someone was sleeping in the basement, the Tenant informed her she had neglected to inform the Caretaker that no person could occupy the basement space. The person who had been renting a room upstairs did not move out before the new person going in to that room arrived so the Caretaker allowed the person, who had vacated the upstairs room, to stay in the basement for a few days.

The Appellant provided letters from both the Tenant and Caretaker attesting to the fact the Appellant was not aware there was a person occupying the basement area. Both letters state the occupancy was for a few days duration only and was the result of a move transition concerning the previous occupant of one of the upstairs rental rooms. The Tenant confirmed in her letter she had not had a chance to talk to the Caretaker to make him aware of the condition placed on the basement by Alberta Health Services and by the Owner in the Lease. The Caretaker, in his letter, stated the basement was not rented, merely used for a few days during a transition move.

In April 2010, the Appellant decided not to complete the necessary repairs to have the Premises meet the requirements of the Minimum Housing and Health Standards and she decommissioned the basement suite (Premises) as required by Alberta Health Services. She stated she had done everything in her power to abide by the conditions Alberta Health Services requested of her to meet their requirements. This included removing the bedroom walls and dismantling the kitchen area including the stove, fridge and sink.

The Appellant had no dispute with any of the findings set out in the Order being appealed and had fixed the bathroom plumbing in the basement as required in the Order. She maintained however, that since she has no wish to turn the basement in to a suite that meets the requirements of the Minimum Housing and Health Standards, she did not see the need to make the repairs that are specific to that outcome.

Although there had been two previous Health Hazard Notices registered on the title to her property, the Appellant stated they were both discharged from the title with the condition that the basement would be used for storage only. Since then she had not made any changes to the Premises.

After the Order that is being appealed was issued, the Appellant installed a lock on the basement door and offered to allow Alberta Health Services to keep the key. The only problem with locking the door is it eliminates access to the electrical panel which is in the basement. The Appellant does not know what else she can do to ensure the basement remains occupancy free.

Since the Appellant did not wish to bring the Premises up to the standards required by the Minimum Housing and Health Standards she did not agree with the conditions of the Order related to doing so. The Appellant submitted these conditions are not necessary if the Premises are used for storage and utility purposes only. As well, since she was planning to sell the property she wanted to have the Notice of Health Hazard removed from the title.

G. RESPONDENT'S SUBMISSIONS

Counsel for Alberta Health Services submitted a document entitled "Excerpts of Key Evidence and Arguments" which was entered in to evidence as Exhibit D. In addition, an indexed binder of documents and photographs submitted by Counsel for Alberta Health Services was entered in to evidence as Exhibit E.

On May 7, 2014 Alberta Health Services received a service request (complaint) from the Edmonton Police Service indicating that both the upstairs and basement areas of the Premises were being occupied and not in good repair.

A service request was received on May 7, 2014 indicating the basement was occupied. The following day, May 8th, two Executive Officers were allowed entry to the house by the upstairs tenants who indicated to them that one person was occupying the basement area. The door to the basement was open and the Officers, upon inspecting the Premises, found evidence the basement was occupied. They documented and took photographs of a makeshift food preparation area that included food items, dishes, pots, small fridge, microwave and makeshift counter; bed with bedding; mattress against a wall; clothing and other personal items; bedroom window that did not open; partially drywalled interior walls with blankets hanging to create various rooms; couch; a fair quantity of mail; and, a bathroom that was no longer decommissioned since it included a toilet and sink with leaking plumbing that resulted in pooled water on the linoleum floor.

Alberta Health Services had previous experience with the Premises since being purchased by the present owner in 2007. On two separate occasions Unfit for Habitation and Vacate Orders were issued to the Appellant. As well, two Notices of Health Hazards were registered on the title to the property. The Orders and Health Hazard Notices were rescinded in both cases with the condition that the basement area was to be used for storage and utilities only and not for occupancy or sleeping purposes.

Following the first Order issued to the Appellant on July 15, 2008 and subsequent April 26, 2010 Rescind Notice Alberta Health Services received service requests on two separate occasions indicating the Premises were being occupied. In the first instance, Alberta Health Services sent a letter to the Appellant notifying her allegations had been made that the basement was being occupied. The letter reminded the Appellant the Premises were not to be used for sleeping purposes as per the Rescind Order issued on April 26, 2010.

The second instance resulted from an August 5, 2011 complaint from the occupant who said she had signed a rental agreement with the owner to rent the Premises (the basement) and had paid rent but not received a receipt. In a follow-up conversation the occupant informed Alberta Health Services the owner had attempted to get her to sign a document indicating she was not a tenant of the Premises which she had refused to do.

Alberta Health Services submitted that the Appellant had admitted someone was living in the Premises and the evidence was clear that it was occupied. It was the Respondent's submission that whether the Appellant had knowledge of that before or after the Order was issued was not pertinent.

Alberta Health Services submitted the Order was valid at the time it was issued and that is the test for whether the Board should vary or reverse the Order. The Respondent also submitted that the due diligence the Appellant undertook to ensure the Premises would not be occupied was not to be considered by the Board. The only consideration was whether the Premises were occupied at the time the Order was issued.

Alberta Health Services submitted that the onus was on the Appellant to ensure the basement was not occupied and to have taken the measures required to prevent that from occurring. Two previous Orders had been issued and rescinded by Alberta Health Services in the past and this had not had the desired effect of keeping the Premises unoccupied. The Respondent would rescind the Order if satisfactory measures were taken to ensure the Premises were not occupied again. The Executive Officer was unclear as to what those measures would be given the history.

The Respondent also submitted that the Board did not have jurisdiction to direct the removal of the Notice of Health Hazard from the Appellant's title to the property.

H. DECISION

Having considered all of the evidence and submissions of the parties, the Board has decided the Executive Officer's Order dated May 13, 2014 is confirmed.

I. REASONS

1. Should the Order be reversed or varied since the Owner, verbally and in her Residential Tenancy Agreement with the Tenant of the residential property, municipally described as 11734 – 87 Street, Edmonton, Alberta and which included the basement area (the Premises), specified the basement was to be used for storage only and there was to be absolutely no sleeping in the basement?

Alberta Health Services provided verbal, written and pictorial evidence to support their position that the Premises were occupied at the time of their inspection. When asked, the Appellant stated the Caretaker had confirmed to her that a tenant had occupied the Premises. Arguments were put forth by the Appellant however, to indicate the occupancy of the Premises was for a few days duration only to accommodate a move transition and that the Premises were not being rented since no rent was charged.

The Board finds sufficient evidence was presented to substantiate Alberta Health Services' position that the Premises were occupied which was a contravention of the

Public Health Act and its Regulations and also a contravention of the conditions contained in the Rescind Notice. Specifically, the Board finds that, at the time of the inspection which resulted in the Order being issued, the Premises were occupied and the conditions specified in the Order were required to be completed in order for the Premises to be occupied.

The short duration of the occupancy is not grounds to reverse the Order. In addition, the Board finds that although the Premises were not rented specifically to a tenant and the Appellant did not receive rent from the occupant, the Premises were still occupied at the time the Order was issued.

After prior Orders had been issued regarding these Premises and before the Order being appealed was issued, the Appellant indicated to Alberta Health Services that she had no wish to complete the necessary renovations in the basement to meet the requirements of the Minimum Housing and Health Standards. For this reason, the Appellant decommissioned the basement suite and Alberta Health Services rescinded two previous Orders on the condition the Premises would be used for storage and utilities only. The Appellant stated she had done everything Alberta Health Services requested of her and the situation that resulted in the May 13, 2014 Order being issued was due to a mistake on the part of the Tenant. The Appellant had verbally informed the Tenant the basement could not be used for occupancy but for storage only and had also included this in the Tenant's Rental Agreement. She had no knowledge the Tenant neglected to inform the Caretaker of the condition.

While the Board recognizes the Appellant had taken measures to ensure that she did not contravene the Public Health Act and its Regulations by allowing the Premises to be occupied, we also recognize it was the Appellant's responsibility to ensure those measures were sufficient and that the conditions she set out for her tenant were adhered to at all times. The measures taken were not sufficient to prevent another breach of the Act and it is the Board's finding that she cannot delegate this regulatory requirement to her tenant.

The Board finds the conditions that formed the Rescind Order and the regulatory requirements as set out in the Order pursuant to the Public Health Act and its Regulations cannot be delegated by the Appellant to her Tenant. Merely detailing the conditions in a Tenancy Agreement does not relieve the Appellant of the obligations contained in the Act. The tenant, whose business is to rent rooms, would appear to have little, if any, incentive to ensure compliance. Although evidence was not provided to indicate for what length of time the Premises were occupied, it does show the Premises were returned to some degree or form of occupancy at the time of the onsite inspection. The ultimate responsibility and ability to ensure the Premises are not occupied rests with the Appellant as the Owner of the property.

2. Should the Order be reversed now that the Owner has secured the basement with a lock?

The Board finds that after the Order was issued the Appellant had endeavored to comply with the Order by placing a lock on the basement door to restrict access to the Premises. The Board declines to reverse the Order based on this preventative measure taken after the Order was issued. At the time the Order was issued it was valid. The Appellant is advised to meet with Alberta Health Services to ascertain what measures would have to be implemented by the Appellant to have the Order rescinded given the history of contraventions of the Act involving the Appellant and the Premises.

3. Should the Board remove the Notice of Health Hazard from the title of the Premises?

The Notice of Health Hazard registered on the Appellant's title was registered pursuant to s.64 of the *Public Health Act* which states:

s.64 (1) When an order is issued under section 62, the regional health authority may cause to be filed with the Registrar of Land Titles a notice of health hazard against the registration of any person as a transferee or owner of, or of any instrument affecting, the land that is subject of the order, unless the instrument or certificate of title is expressed to be subject to that notice.

(2) A notice of health hazard registered under this section does not lapse and shall not be cancelled or withdrawn except on the receipt by the Registrar of a notice in writing from the Regional Health Authority requesting cancellation or withdrawal.

(3) On registering a notice of health hazard, the Registrar shall notify the person against whose title the notice is registered and notify caveators and mortgagees when the addresses of those persons may be ascertained from the certificate of title.

The Board's jurisdiction to hear appeals is found in s. 5 of the *Public Health Act* and it states (emphasis added):

In this section, "decision of a regional health authority" means

(a) An order issued under section 62, and

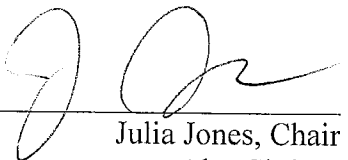
(b) A decision to issue or to cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations, and any other decision in respect of which an appeal to the Board is permitted under the regulations, whether any of those decisions

is made by the regional health authority itself or one of its employees or agents.

As the registration of the Notice was not an Order issued under section 62 of the *Public Health Act*, the Board finds it does not have jurisdiction to direct the removal of the Notice. If the Order issued pursuant to s.62 were reversed, the pre-requisite for registering the notice, “when an order is issued under section 62”, would not be met but in this instance, the Board has confirmed the Order and not reversed it.

I. SUMMARY

The Executive Officer’s Order dated May 13, 2014 is confirmed.

Per: 

Julia Jones, Chair
Also Sitting:
David Thomas, Member
Terry Bunce, Member
Linda Cloutier, Member

Date: July 20, 2014



Environmental Public Health

ORDER OF AN EXECUTIVE OFFICER
UNFIT FOR HUMAN HABITATION
ORDER TO VACATE

- To: Chandra Kanta
Edmonton, Alberta
- Ahmad Wali
Edmonton, Alberta
- Hazra B. Wali
Edmonton, Alberta
- Reena Mani
Edmonton, Alberta

And To: All Occupant(s) of the following Housing premises:

RE: Those housing premises located in Edmonton, Alberta and municipally described as:
Basement, 11734 – 87 Street, Plan RN43B, Block 75, Lot 20

WHEREAS I, an Executive Officer of Alberta Health Services, have inspected the above noted premises pursuant to the provisions of the Public Health Act, RSA 2000, c. P-37, as amended;

AND WHEREAS such inspection disclosed that the following conditions exist in and about the above noted premises which are or may become injurious or dangerous to the public health or which might hinder in any manner the prevention or suppression of disease, namely:

- a. There was no smoke alarm installed.
- b. The head clearance in the basement was too low, with the lowest point measuring 170 cm in some areas.
- c. The window in the east room was unable to be opened and was too small for egress in the case of a fire or other emergency. This room was being used for sleeping purposes, evidenced by the presence of a bed and bedding as well as other personal items.
- d. There was a plumbing leak underneath the bathroom sink, with water pooled on the bathroom linoleum floor.
- e. The walls throughout the basement consisted of exposed studs with the partial installation of unfinished drywall in places.

AND WHEREAS such inspection disclosed that the following breaches of the Public Health Act and the Housing Regulation, Alberta Regulation 173/99, and the Minimum Housing and Health Standards exist in and about the above noted premises, namely:

- a. There was no smoke alarm installed which is a contravention on section IV(12) of the Minimum Housing and Health Standards which states that smoke alarms within dwellings

PAGE 5

Order of an Executive Officer – Unfit for Human Habitation - Order to Vacate

RE: The premises located in Edmonton, Alberta and municipally described as: Basement, 11734 -- 87 Street

Page 2 of 4

shall be installed between each sleeping area and the remainder of the suite; and, where hallways serve the sleeping areas the smoke alarms shall be installed within the hallway.

- b. The window in the east room was unable to be opened and was too small for egress in the case of a fire or other emergency which is a contravention of section III(3)(b) of the Minimum Housing and Health Standards. Windows intended to be secondary means of egress shall provide unobstructed openings with areas not less than 0.35 m² (3.8ft² or 547 inches²), with no dimension less than 380 mm (15"). All egress windows must open directly to the outside.
- c. There was a plumbing leak underneath the bathroom sink which is a contravention of section IV(6)(a) of the Minimum Housing and Health Standards which states that: The plumbing system and the sanitary drainage system or private sewage disposal system, as the case may be, including drains, fixtures, traps, vents, stacks, waste disposal facilities, pumpout sewage holding tanks, septic tanks and the disposal system shall be maintained in a proper operating condition.
- d. The walls throughout the basement consisted of exposed studs with the partial installation of unfinished drywall in places which is a contravention of section III(5) of the Minimum Housing and Health Standards which states that all walls, windows, ceilings, floors, and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean.

AND WHEREAS, by virtue of the foregoing, the above noted premises are hereby declared to be **Unfit for Human Habitation**.

NOW THEREFORE, I hereby **ORDER** and **DIRECT**:

1. That the occupants vacate the above noted premises immediately.
2. That the owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
 - a. Install an operational smoke alarm near the sleeping area.
 - b. Increase head clearance in to at least 183 cm.
 - c. Repair or replace all bedroom windows which are intended to be a secondary means of egress. Bedroom windows intended to be used as a secondary means of egress shall provide unobstructed openings with areas not less than 0.35 m² (3.8ft²), with no dimension less than 380 mm (15"). All egress windows must open directly to the outside.
 - d. Repair the bathroom plumbing so that it is in proper operating condition and free from leaks.
 - e. Ensure all walls, windows, ceilings, floors, and floor coverings are maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders it easy to clean.

PAGE 6

Order of an Executive Officer – Unfit for Human Habitation - Order to Vacate

RE: The premises located in Edmonton, Alberta and municipally described as: Basement, 11734 – 87 Street
Page 3 of 4

3. That until such time as the work referred to above is completed to the satisfaction of an Executive Officer of Alberta Health Services; the above noted premises shall remain vacant and secure from unauthorized entry.

The above conditions were noted at the time of inspection and may not necessarily reflect all deficiencies. You are advised that further work may be required to ensure full compliance with the Public Health Act and regulations, or to prevent a public health nuisance.

DATED at Edmonton, Alberta, May 13, 2014

Confirmation of a verbal order issued to Mrs. Chandra Kanta, on May 9, 2014.



Rebecca Johnson, CPHI(C)
Executive Officer
Alberta Health Services

YOU HAVE THE RIGHT TO APPEAL

A person who a) is directly affected by a decision of a Regional Health Authority, and
b) feels himself aggrieved by the decision

may appeal the decision within ten (10) days after receiving the order to the Public Health Appeal Board located at Reception, Main Floor, Telus Plaza, 10025 Jasper Avenue, Edmonton, Alberta, T5J 1S6, Telephone 780-427-2813 Fax 780-422-0914.

The terms of this Order remain in effect notwithstanding the filing or proposed filing of any such appeal. If you appeal, you may also make an application to the Board for a stay of this Order pending the appeal.

A copy of the Public Health Appeal form may be obtained by contacting Alberta Health Services at 780-342-0122 or the Public Health Appeal Board 780-427-2813.

You are advised that all orders remain in effect pending such an appeal

Health Legislation, Regulations and Standards

Electronic versions of the Public Health Act and Regulations are available at the Alberta Queen's Printer Bookstore 10611 - 98 Avenue, Main Floor, Park Plaza, Edmonton, Alberta, T5K 2P7 or www.qp.gov.ab.ca.

Health Legislation and regulations are available for purchase. Please contact Alberta Queen's Printer Bookstore 10611 - 98 Avenue, Main Floor, Park Plaza, Edmonton, Alberta, T5K 2P7 or www.qp.gov.ab.ca.

Copies of standards are available by contacting the Health Protection Branch of Alberta Health at 780-427-4518, or by visiting: www.health.alberta.ca/about/health-legislation.html

PAGE 7

Order of an Executive Officer – Unfit for Human Habitation - Order to Vacate

RE: The premises located in Edmonton, Alberta and municipally described as: Basement, 11734 – 87 Street

Page 4 of 4

Edmonton • HSBC Building • Environmental Public Health
Suite 700, 10055 – 106 Street, and Edmonton, Alberta, Canada T5J 2Y2
www.albertahealthservices.ca/eph.asp

PAGES