

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 STAY APPLICATION TO
THE CHAIR OF THE PUBLIC HEALTH APPEAL BOARD
BY MATTHEW PETERS
OF THE ORDERS OF AN EXECUTIVE OFFICER
ISSUED BY ALBERTA HEALTH SERVICES
ZONE 4 EDMONTON
DATED AUGUST 18, 2016 ("Orders")
STAY HEARING HELD SEPTEMBER 29, 2016

Appearances

Matthew Peters, Owner/Appellant

Mark Raven-Jackson, Legal Counsel, Alberta Health Services/Respondent

Chair of Board's Decision

The Chair decided to grant a partial stay of the Orders until the Board renders its decision in the appeal.

Introduction

The Orders were issued pursuant to the *Public Health Act*, the *Housing Regulation* and the *Minimum Housing and Health Standards* for a residential property located at 10851 75 Avenue Edmonton (the "Property").

There was a dispute between the parties regarding when the Appellant received the Orders. The Notice of Appeal was received by the Board on September 7, 2016. The parties had been advised the Board will address the possible late filing of the Notice of Appeal at the appeal hearing set for November 4, 2016.

The stay hearing was held on September 29, 2016 by way of a telephone conference. On October 5, 2016 the Chair notified the parties that both Orders were stayed with the exception of the following matters which must be completed forthwith:

1. Ensure all suites are equipped with functional smoke alarms. Ensure functional smoke alarms are installed where needed in common areas. Smoke alarms shall be operational and in good repair at all times; and

2. Remove any items that may obstruct the path of egress from the North West basement suite egress window. Ensure all egress windows have unobstructed paths for egress at all times.

Issue

Whether a stay of the Executive Officer's Orders dated August 18, 2016 ought to be granted.

Appellant's Submissions

The Appellant submitted the appeal was not frivolous or vexatious. He stated the issue of whether the Property was rental property was important and not simple because it was his mailing address, his personal papers were stored there, he cooked there every day and showered and slept there on occasion. He stated the Property did not become a public place merely because he had a lodger.

The Appellant also disputed some of the findings set out in the Orders including whether the front door worked properly, whether the space between the spindles was properly recorded and whether there was a mouse infestation. He submitted all of these matters were issues to be tried at the appeal.

Regarding irreparable harm, the Appellant submitted he would suffer irreparable harm as a result of losing rental revenue and expending money on repairs. He submitted this harm can cause other harm such as affecting his family's living circumstances as loss of revenue directly affects peoples' lives.

With respect to the balance of convenience portion of the test for a stay, the Appellant raised the following points:

- What would be the point of the appeal if he had to comply with the Orders prior to the appeal hearing;
- He would suffer a loss of revenue and incur expenses for the repairs if the stay was not granted;
- The tenant would be out on the street if a stay was not granted and some have resided on the Property for six or seven years;
- The tenant would have few options for alternate accommodations; and
- No one has been harmed in the past decade and there is no emergency.

Alberta Health Services' Submissions

Counsel for Alberta Health Services submitted the test for a stay is set out in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

Counsel submitted the appeal is without merit and the Appellant is merely seeking to delay completing the required repairs for the Property. He submitted there were critical contraventions set out in the Orders: obstructed path of egress from the North West basement suite, missing or nonfunctional smoke alarms, pest infestation and a broken window.

Counsel stated the Vacate Order was for one room only and it included a natural gas furnace with no barrier, low headroom clearance and no smoke alarm. In addition, the Order gave the tenant sufficient time to secure new accommodation.

Counsel submitted there were five violations in the Order that the Appellant stated were easy fixes in the Notice of Appeal and those should not be stayed. In addition, the Board cannot hear Charter arguments and the issue of the Property being private is not an issue as the Appellant conceded the rooms were being rented so they were public places pursuant to the *Public Health Act*.

The Appellant disputed the violations relating to the front door, guard rails and whether the fridge is cold enough but disagrees the remaining violations are a public health risk. He submitted this is not for him to appeal as the requirements are set out in the *Act* and *Regulations*.

Counsel submitted the first part of the test for a stay was not a high threshold but the Appellant had not established that there was a serious question to be tried. He submitted the Notice of Appeal was frivolous and vexatious.

Regarding irreparable harm, Counsel submitted economic loss alone was not irreparable harm. Easy fixes cannot be irreparable harm and as the hearing is scheduled for November 4, 2016, the loss of rental revenue would be for one month only.

On a balance of convenience, the rights of the occupants must be considered and they had been living in poor conditions too long. There were minimal inconveniences to the Appellant and the balance could not be tipped in favour of the Appellant by matters that were an easy fix.

Reasons

The Chair or Vice-Chair of the Board is empowered to grant a stay pursuant to section 6 of the *Public Health Act*. This section states:

An appeal taken pursuant to section 5 does not operate as a stay of the decision appealed from except so far as the chair or vice-chair of the Board so directs.

A stay postpones the enforcement of the Order until the appeal is heard and decided by the Board. The test for whether a stay should be granted is set out by the Supreme Court of Canada in *RJR- MacDonald*. It is a three-part test:

1. Is there a serious question to be tried?
2. Would the Appellant suffer irreparable harm if the stay was not granted?
3. Assess the balance of inconvenience to the Appellant if the stay is not granted and the inconvenience to the Respondent if the stay is granted. In this part of the test the inconvenience of other parties may be considered as well as the public's interest.

Application of the test

Is there a serious question to be tried? This part of the test has a low threshold and can be met if the appeal is not frivolous or vexatious. The Appellant disputes several of the findings set out in the Order as well as whether some of the items constitute risk to public health. The Appellant showed the appeal was not frivolous or vexatious.

The second part of the test is whether the Appellant would suffer irreparable harm if the stay was not granted.

The Supreme Court of Canada in *RJR- MacDonald* made a distinction between disputes involving the *Charter* and disputes involving private parties. This distinction pertains to whether economic loss can be considered irreparable harm. The Court sets out the considerations regarding compensation for the party that is not granted a stay of an Order and is successful on appeal. The considerations in *Charter* cases are analogous to *Public Health Act* appeals. There are no provisions in the *Public Health Act* for the Appellant to be compensated for financial losses in the event he is successful appealing the Order. Unlike private litigation between parties, there is no obvious route by which a person subject to an Order may seek compensation from Alberta Health Services in the event an Order is overturned on appeal. Absent bad faith or maliciousness, it is likely that no compensation would be recoverable.

For this reason, financial loss can, in appropriate circumstances, constitute irreparable harm.

The Appellant may also suffer irreparable harm as his appeal may become moot if a stay is not granted. The Orders required the Appellant to complete the work prior to the appeal hearing date on November 4, 2016 and the order to vacate was set for September 18, 2016. Without a stay the Appellant would have to comply with the Orders and this may result in his appeal being moot.

The financial loss of paying for repairs and the loss of rental revenue combined with the potential mootness of the appeal if the stay was not granted constitute irreparable harm.

The third part of the test requires an assessment of the inconvenience to the Appellant if the stay is not granted and the inconvenience to the Respondent if the stay is granted. In this part of the test the inconvenience of other parties may be considered as well as the public's interest.

The inconveniences for the Appellant often overlap with the irreparable harm the Appellant will suffer if a stay is not granted. These include financial loss, both loss of revenue and repair costs and the potential of his appeal being moot.

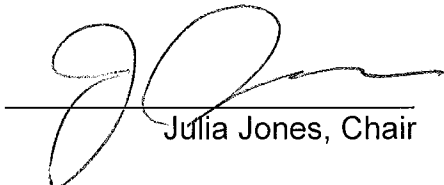
Both Alberta Health Services and the Appellant submitted the inconvenience of the tenant ought to be considered. The Appellant stated the tenant, who has resided there for several years, would be required to relocate. Counsel for Alberta Health Services

stated the tenant had resided in poor conditions long enough and the repairs ought to be completed immediately. Considering the appeal hearing is set for November 4, 2016, the inconvenience is greater for the tenant if he were forced to relocate rather than reside in poor conditions for another month. The tenant ought to have the choice of deciding whether to leave the Property rather than being forced to move prior to the Board deciding the appeal.

On a balance, the inconveniences are tipped in favour of granting a stay of the Orders. However, two contraventions and repairs will not be stayed and must be addressed by the Appellant immediately as they are a significant risk to public health, and in particular to the tenant's health, and those are the egress issues and the smoke alarms.

For the above reasons, the Chair of the Public Health Appeal Board has granted a partial stay of the Orders until the Board renders its decision in the appeal. Both Orders are stayed with the exception of the following matters which must be completed forthwith:

- 1. Ensure all suites are equipped with functional smoke alarms. Ensure functional smoke alarms are installed where needed in common areas. Smoke alarms shall be operational and in good repair at all times; and**
- 2. Remove any items that may obstruct the path of egress from the North West basement suite egress window. Ensure all egress windows have unobstructed paths for egress at all times.**

Per: 

 Julia Jones, Chair

Date: October 14, 2016