

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 ADRIA PEREPELITZA
OF THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY
ALBERTA HEALTH SERVICES ZONE 3 DATED AUGUST 9, 2017

DECISION OF THE BOARD

Hearing date

September 20, 2017

Appearances:

For the Appellant:

Tim McRae, Agent for the Appellant
Adria Perepelitza, Appellant

For the Respondent:

Linda A. Svob, Counsel for Alberta Health Services (“AHS”)
Zaheen Nanji, AHS Executive Officer

Sitting for the Board:

Denis Lefebvre, Chair
Wendy Lickacz, Vice-chair
David Rolfe, Member

Board Decision

[1] The order dated August 9, 2017 (the “Order”) is confirmed by the Board for the reasons provided below.

Background/Facts

[2] On August 8, 2017, AHS received a mould complaint with respect to the premises owned by the Appellant, which is municipally located at 5114-60 Avenue, Ponoka, Alberta, and legally described as:

Lot 2
Block 7B
Plan 3984HW

(the “Premises”)

[3] That same day, AHS Executive Officer, Zaheen Nanji (“Nanji”) attended at the Premises. After having identified herself, Nanji requested that she inspect the basement suite of the Premises (the “Suite”). That request was granted and she was initially allowed access to the Suite.

[4] Nanji proceeded with a comprehensive inspection (the “Inspection”) pursuant to s.59(1) of the *Public Health Act* (the “Act”).

[5] During the Inspection, Nanji’s camera became inoperable due to low battery power. As such, she returned to her vehicle to retrieve a cellphone so she could continue the Inspection. However, upon her return to the Premises, the Appellant blocked the entrance.

[6] Nanji explained her authority to inspect the Suite pursuant to the Act. She also stated that she could return with a court order. Despite this, the Appellant was steadfast in her refusal to allow access and requested that Nanji return with a court order.

[7] While the Inspection was not fully completed, Nanji was able to make observations including measuring the Suite’s bedroom windows. She shared her findings with the Appellant and explained that the bedroom windows did not comply with the Housing Regulations and the Minimum Housing and Health Standards (collectively the “Regulations”).

[8] The Order was issued by Nanji, which directed the occupants to vacate the Suite on or before August 23, 2017, and further directed that the Appellant replace the windows in all of the Suite’s sleeping rooms so that said windows comply with the Regulations.

Timing of Appeal

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

[10] The Health Appeal Board Secretariat received a notice of the appeal dated August 19, 2017 (the “Notice of Appeal”) on August 21, 2017. Since there are no records indicating when the Order was served upon the Appellant, the Board assumes that the Notice of Appeal was filed on time. There were no objections from AHS.

Jurisdiction

[11] There were no objections to the Board’s jurisdiction to hear the Appeal.

Documents/Exhibits

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

- (a) **Exhibit 1** - The Order
- (b) **Exhibit 2** - The Notice of Appeal
- (c) **Exhibit 3** - A binder prepared by AHS, which contains a written brief of law and argument with supporting documents; and
- (d) **Exhibit 4** - A duo-tang prepared by the Appellant which contains documents the Appellant intended to use in support of her submissions. While the duo-tang references each of its documents as an “exhibit”, the Board will refer to those documents as “items” to avoid confusion.

Legal Issues

[13] The legal issues for this Appeal are as follows:

- (a) Whether the *Public Health Act* applies to the Premises; and
- (b) Whether the windows in the sleeping rooms of the Suite comply with the Regulations.

Other issue raised by the Appellant

[14] The Appellant raised concerns with respect to the conduct of the Executive Officer. However, this is not a proper ground for an appeal as the Board has no jurisdiction respecting alleged misconduct of AHS Executive Officers. As such, the Board did not consider this issue.

Submissions of the Appellant

[15] The Appellant’s Advocate, Mr. Tim McRae (“McRae”) submits that the windows in the Suite’s bedrooms are in compliance with the Regulations. He presented items D and E of Exhibit 4, which are copies of reprinted invoices, as evidence of the windows’ dimensions. The said invoices showed that four (4) windows were purchased on September 21, 2012. McRae explained that those very windows were the ones installed in the Suite (as shown in the photos at item F of Exhibit 4) and said windows exceeded 3.8 square feet and were therefore in compliance with the Regulations. Pointing to the last two (2) pictures at item F, McRae also explained that the windows were equipped with “stupid proof” locks and swing arm hinges that allow for the window to fully open, therefore making it easy for emergency egress.

[16] With respect to whether the Act applies, McRae argued that the Premises is a private dwelling and not a public place. He drew the Board’s attention to item G of exhibit 4, which is a copy of a room rental agreement dated August 28, 2016 (the “Agreement”). He explained that the Agreement does not create a landlord-tenant relationship. That is to say, the occupant of the Suite (the “Occupant”) was only a “roommate”, who had access to the Premises, including certain areas of the Suite. Further, there were no locked doors separating the Suite from the rest of the Premises. It was argued that the *Residential Tenancies Act* (the “RTA”) did not apply per the Agreement. Further arguments regarding the non-applicability of the RTA were made while referencing item H of exhibit 4. The Appellant also submitted that while the Occupant responded

to a Kijiji ad (and was therefore not known to her at the time), she eventually considered him a family member, as she purchased a bed frame (for which he later paid) and she did baking for him, and the Occupant helped with various chores such as cutting the lawn and removing snow.

[17] During questioning, it was confirmed that, for the consideration of \$800.00 per month, the Occupant had access to the Premises and slept in one of the Suite's bedrooms.

[18] In his closing submissions, the Appellant's Advocate argued that the windows are adequate, and considering the totality of the evidence, there is no reason why the Suite should be closed for roommate occupation.

Submissions of the Respondent

[19] The Respondent submitted that the Occupant is a tenant and that the Agreement as prepared by the Appellant has all of the characteristics of a rental accommodation.

[20] In support of AHS's submissions, counsel for the Respondent referred to the Provincial Court of Alberta case of *Her Majesty the Queen v. Mohammed Harron Khan*. The Court in that case stated that in addition to the standard definition of "tenant" per the *Oxford English Dictionary*, Second Edition (Oxford: Oxford University Press, 1991), "it would seem that a transfer of money, or some other consideration, is relevant to the description of tenant and tenancy."

[21] The definition of "public place" per s. 1(ii)(viii) of the Act includes all rental accommodation. The legislature clearly intended for any rental accommodation to be subject to inspection by AHS pursuant to s. 59 of the Act and the Regulations.

[22] The Respondent further submitted that the Suite falls within the definition of a public place per the Act. As such, the Executive Officer, Nanji, had legal authority to enter upon the Premises to conduct the Investigation.

[23] With respect to the bedroom windows in the Suite, Nanji measured the Suite's bedroom window (where the Occupant slept) at 16" x 29.75" with a total area of 476 square inches (3.3 square feet), which contravenes the Regulations and therefore poses a risk to public safety. The minimum standards per the Regulations require basement bedroom windows to have unobstructed openings with areas of not less than 547 square inches (3.8 square feet) with no dimensions less than 15 inches.

[24] Finally, given the purpose of the Act, it was argued that the Appellant, as an individual who participates in a regulated activity, must accept the responsibilities inherent with that role and therefore has a positive obligation to comply with the Act and the Regulations.

Analysis/Reasons

Does the Public Health Act apply to the Premises?

[25] The Appellant alleges that the Occupant was not a tenant. Changes to the term "roommate" in the Agreement as well as the inapplicability of the *Residential Tenancies Act* are not relevant

to the issue before the Board. The Appellant also compared the Premises with other premises that AHS has previously ordered closed for tenant accommodation because of the presence of animal feces and other contaminants or hazards. This too is completely irrelevant, as the measure of whether the Appellant is in contravention of the Act and the Regulations depends on the facts and evidence as it relates specifically to the Appellant's case and nothing else.

[26] The Board rejects the argument that the Premises (and therefore the Suite) are considered a private dwelling and not a public place. The Board also rejects the Appellant's argument that the Act, therefore, does not apply. The Act applies to both public places and private dwellings. The main difference is that a private dwelling requires consent of the owner in order for the Executive Officer to enter upon the premises. Section 60 of the Act states as follows:

Inspection of private place

60 Where an executive officer believes on reasonable and probable grounds that a nuisance exists in or on a private place or that the private place or the owner of it is in contravention of this Act or the regulations, the executive officer may, with the consent of the owner or pursuant to an order under section 61,

- (a) enter in or on the private place at a reasonable hour and inspect it;
- (b) 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;
- (c) take samples of any substance, food, medication or equipment being used in or on the private place;
- (d) perform tests, take photographs and make recordings in respect of the private place.

[27] As is correctly submitted by the Respondent, a "public place" is defined at s.1(ii)(viii) as "any place in which the public has an interest arising out of the need to safeguard the public health and includes, without limitation, accommodation facilities, including all rental accommodation."

[28] On the facts and evidence before the Board, the Occupant was paying rent to reside in the Premises. It is also in the public's interest to safeguard the health of the Occupant and any other member of the public that would rent any portion of the Premises for that matter. This clearly makes the Premises (and therefore the Suite) a rental accommodation as contemplated by the Act and therefore a public place. And even if the Premises were to be considered a private dwelling, Nanji nonetheless was authorized to conduct the Investigation because:

- (a) There was reasonable and probable ground that a nuisance existed (based on the complaint receive from the Occupant); and
- (b) The Appellant provided consent to Nanji to enter upon the Premises.

[29] The fact that the Appellant refused re-entry to Nanji when she returned after having left for a short time to retrieve her cellphone from her car does not change anything.

[30] There was also a great deal of concern during the hearing that Nanji proceeded to measure the windows when she only received a complaint with respect to the possible presence of mould. This too is irrelevant. Section 59 of the Act authorizes an Executive Officer to conduct a thorough and comprehensive health investigation for the purposes of determining the presence of

a nuisance or determining whether the Act and the Regulations were being complied with. An Executive Officer is therefore not limited to inspecting the subject matter of a complaint.

Do the Suite's bedroom windows comply with the Regulations?

[31] When Nanji explained to the Appellant that the bedroom windows of the Suite were non-compliant with the Regulations, it would have been very easy for the Appellant to simply return to the Suite with Nanji to confirm the measurements. Instead, the Appellant prevented the Executive Officer from re-entering the Suite and now relies on invoices for the alleged purchase of the Suite's windows as evidence that the measurement of those windows exceed 3.8 square feet with no dimensions less than 15 inches.

[32] When asked if the Appellant was able to provide evidence that links the invoices to the Suite's windows, McRae responded that he did not have any such evidence.

[33] The Board prefers the evidence provided by Executive Officer Nanji, a 16 year veteran health inspector with AHS. The Board does not doubt the competence of Nanji and her ability to measure a basement window. As stated, it would have been far easier for the Appellant to ask Nanji to re-measure the window in her presence. This would have eliminated any doubt in the Appellant's mind.

[34] Section 3 of the Minimum Housing and Health Standards states as follows:

3. Safe and Secure

(a) Locking Window and Door Hardware

Exterior windows and doors shall be capable of being secured.

(b) Emergency Egress

- i. For buildings of 3 storeys or less and except where a bedroom door provides access directly to the exterior or the Suite is sprinklered, each bedroom shall have at least one outside window which may be opened from the inside without the use of tools or special knowledge.
- ii. Windows referred to in section 3(b)(i) shall provide unobstructed openings with areas not less than 0.35 m² (3.8ft²), with no dimension less than 380 mm (15").
- iii. If the window referred in section 3(b)(i) is provided with security bars, the security bars shall be installed so they may be opened from the inside without the use of any tools or special knowledge.
- iv. Notwithstanding section 3(b)(i), (ii) and (iii), alternate provisions for emergency egress may be approved by an executive officer where, after consultation with a safety codes officer, the executive officer is satisfied that the alternate provisions provide for means of emergency egress.

[35] Nanji testified that she measured the Suite's bedroom window (where the Occupant would sleep) and recorded its dimensions at 16" x 29.75" with a total area of 476 square inches (3.3 square feet). This does not meet the minimum requirement of 3.8 square feet.

[36] The Respondent is also correct in their submissions that persons who engage in regulated activities (such as providing rental accommodations to members of the public, as is the case here) must be familiar with the law and must comply with the law.

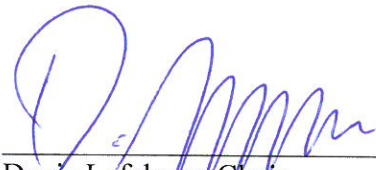
[37] It is very disconcerting, to say the least, that the Appellant would try to avoid the application of the Act and its Regulations as it pertains to emergency egress. There are several examples in Alberta where occupants of rental accommodations perished in fires because they could not escape through the accommodations' basement windows.

Conclusion

[38] The Board has concluded that:

- (a) the Act applies to the Premises; and
- (b) The Suite's bedroom windows are not in compliance with the Regulations and therefore pose a risk to public safety.

[39] The Board hereby confirms the Order.



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

Date: October 19, 2017