

**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 BY ALFRED DALLYN  
OF THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY  
ALBERTA HEALTH SERVICES, ZONE 3, DATED SEPTEMBER 24, 2020**

**AND IN THE MATTER OF AN APPLICATION TO STAY  
THE ORDER PENDING THE APPEAL.**

PANEL: Kevin Kelly, Chair

BETWEEN:	)	
	)	
ALFRED DALLYN	)	Alfred Dallyn,
(Appellant)	)	Self-represented
- and -	)	
ALBERTA HEALTH SERVICES	)	Ashley McClelland,
(Respondent)	)	Alberta Health Services,
	)	for the Respondent
	)	
	)	Stuart Chambers,
	)	McLennan Ross LLP,
	)	Independent Counsel for the Board
	)	
	)	Heard: October 9, 2020
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**DECISION OF THE CHAIR**

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A notice of appeal was received on October 7, 2020. This stay application came before the Chair of the Public Health Appeal Board (the "Chair") on October 9, 2020 via telephone conference.

**The Application**

[1] This is an application for a stay (the "Application") to an order of an Executive Officer ("EO") dated September 24, 2020 (the "Order").

**Decision of the Chair**

[2] The Chair has dismissed the stay application.

## Background

[3] The Order was issued pursuant to the *Public Health Act* (the “Act”), the *Housing Regulation* and the *Minimum Housing and Health Standards* regarding a property located at 730 – 7<sup>th</sup> Avenue, Wainwright, Alberta (the “Premises”). The Order set out the contraventions of the Act and Regulations as they pertained to the condition of the Premises. The EO ordered and directed that:

1. the occupants vacate the Premises on or before October 8, 2020.
2. the owner, Robert DeWinter must complete the following work in and about the Premises:
  - a. Ensure the house and property are maintained in a clean and sanitary condition.
  - b. Install functional smoke alarms in the common area near the bedrooms.
  - c. Supply the house with hot and cold running water that is safe for human consumption, and provide recent satisfactory bacteriological and chemical lab results to demonstrate this.
  - d. Repair the sewer system so that it functions properly, and provide a report from a qualified private septic installer to demonstrate this.
  - e. Repair or replace damaged floor, wall, and ceiling surfaces.
3. The Premises shall remain vacant and secure from unauthorized entry until the work referred to above is completed to the satisfaction of an EO of Alberta Health Services (“AHS”).

## Issue

[4] The issue for consideration by the Chair is as follows:

- (a) Whether a stay of the Order dated September 24, 2020 should be granted.

## The Law

[5] The Chair of the Board is empowered to grant a stay pursuant to section 6 of the Act, which states as follows:

*6. 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.*

[6] A stay postpones the enforcement of the Order until the appeal is heard and decided by the Board. The test to be applied when deciding if a stay should be granted is set out in the Supreme Court of Canada decision in *RJR-McDonald Inc. v. Canada*. The test has three components:

- i. There must be a serious issue to be determined;
- ii. The Appellant must demonstrate irreparable harm if a stay is not granted; and
- iii. There must be an analysis of the balance of convenience, which includes taking into account the public interest.

[7] The first part of the test has a low threshold. It is sufficient that the Chair be satisfied that the appeal is neither frivolous nor vexatious.

[8] Concerning irreparable harm, the question is whether refusing to grant the stay would so adversely affect the Appellant's interest that the harm could not be remedied if the Board eventually overturns the appeal decision. In *RJR-McDonald*, the Court noted that the word "irreparable" refers to the nature of the harm suffered, rather than its magnitude. It pointed out that the harm is that which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[9] With respect to the balance of convenience, the Court acknowledged that the factors in assessing the balance of convenience are numerous and will vary in each case. The Court said it would be unwise to attempt to list the various matters that may need to be taken into consideration for that reason.

[10] If the Appellant does not wish to comply with the EO's Order, or if the Order requires things to be done prior to the date of the appeal hearing, or if AHS declines to extend the date for completion of any required steps, then the Appellant must bring an application to the Public Health Appeal Board seeking to stay the operation of the decision pending the hearing of the appeal. The Appellant bears the onus of proof in such an application, who must provide evidence of each of the required factors. If the Appellant's application is successful, a stay postpones the enforcement of the Order until the appeal is heard and decided by the Board.

[11] In addressing the within stay application, the Chair must consider the following factors:

1. Is there a serious issue to be determined?
2. Did the Appellant demonstrate irreparable harm will arise if a stay is not granted?
3. Does the balance of convenience (including the public interest) weigh in favour of granting a stay of the Executive Order?

### **Submissions of the Appellant**

[12] As the Appellant did not attend the stay hearing, the only submissions from the Appellant before the Chair were those made in the Notice of Appeal. The Appellant focuses in the Notice of Appeal on issues with his roommate and his roommate's dogs rather than requesting that the Premises be allowed to remain open. His other area of concern was seeking time to relocate to other premises.

### **Submissions of the Respondent**

[13] AHS Legal Counsel submitted that:

- a. AHS opposes a stay of the Order and will only respond to the submissions presented in the Appellant's Notice of Appeal.
- b. Looking at the Notice of Appeal and the Appellant's submissions therein, AHS noted that the Appellant bears the onus of proving that the relevant tests have been met to support granting a stay. AHS submits that the Appellant has not proven that a stay should be granted.
- c. The EO offered a fairly generous timeline for the Appellant and any other occupants to vacate the Premises. The Order provided almost two weeks to vacate the Premises on or before October 8, 2020. This timeline was provided because AHS recognized that it may take the Appellant some time to find alternate accommodation. Generally, when a property is deemed unfit for human habitation, and when it displays the significant concerns present in the Premises, such as the lack of water and lack of sanitation due to the sewage backup, AHS would grant an extremely short timeline of a couple of days to allow the occupants to vacate. AHS provided a generous timeline in the first instance in consideration of some of the challenges the Appellant might face in relocating.

### **Analysis and Reasons**

[14] In deciding whether to grant a stay, the Chair considered the following factors:

1. Is there a serious issue to be determined?

[15] AHS submitted that the first stage of the test on a stay is a very low threshold, however, the Notice of Appeal does not identify any triable issues.

[16] The Chair reviewed the Notice of Appeal and accepts the submissions made by AHS on this point. The Notice of Appeal does not identify a serious issue that needs to be determined, and therefore the Chair finds that the Appellant has not satisfied the first part of the test.

2. Did the Appellant demonstrate irreparable harm will arise if a stay is not granted?

[17] AHS submitted that it is very difficult without further submissions from the Appellant to determine where irreparable harm would come from. The Notice of Appeal does not contain any proof that the Appellant would suffer irreparable harm, and it does not touch upon any relocation options the Appellant may have.

[18] The Appellant did not attend the stay hearing and the Notice of Appeal did not demonstrate how irreparable harm would arise. The Chair did not find any evidence in the Notice of Appeal to show that the Appellant would suffer irreparable harm if the Order is allowed to stand. After hearing the submissions from AHS and reviewing the evidence before it, the Chair finds that the Appellant has not demonstrated that irreparable harm would arise if a stay is not granted.

3. Does the balance of convenience (including the public interest) weigh in favour of granting a stay of the Order?

[19] The Chair has reviewed the evidence and weighed the impact on the Appellant of complying with the Order against the impact of allowing the Premises to remain open in its present state. In terms of the balance of convenience, AHS noted the public interest element in this case, and suggests that the state of the Premises represents a significant public health risk. AHS cited several examples in support of its position, including:

- a) there is no running water to the Premises;
- b) the indoor toilet facilities are unusable;
- c) there is a sewage backup in the Premises;
- d) the Premises are in an extraordinarily filthy condition; and
- e) the lack of water and the lack of toilet facilities in the Premises has meant that the occupants have had to use the back yard as a toilet. This has created a significant health risk for the occupants of the Premises and the neighbours.

[20] The Chair notes that the Appellant focuses in the Notice of Appeal on issues such as his roommate and his roommate's dogs rather than requesting that the Premises be allowed to remain open. His other primary concern appears to be that he seeks more time to relocate from the Premises to other premises.

### **Findings and Conclusion**

[21] After reviewing the evidence and the Parties' submissions, the Chair makes the following findings:

- (b) The Appellant has not identified a serious issue to be determined.
- (c) The Appellant has not demonstrated that irreparable harm would arise if a stay is not granted.
- (d) The balance of convenience, including the public interest, was tipped in favour of not granting a stay of the Order.
- (e) The weight of evidence before the Chair does not support a stay of the Order.

[22] Based on the above findings, the Chair of the Public Health Appeal Board has dismissed the Appellant's application for a stay of the Order.

[23] The Order shall remain in force pending the hearing on the merits.

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

**Date: December 15, 2020**

**Appeal 11-2020**