

Appeals No.: 11-2017, 12-2017, 13-2017,
14-2017, 15-2017, 16-2017,
17-2017, 18-2017, 19-2017,
20-2017 and 21-2017

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 ELIENE
RATCH, PETER ARMSTRONG, WADE MORRILL,
DARRELL RYHORCHUK, JOYCE WARD, KATHLEEN
KENTON, VAHEED HOJJATI, ROGER DERANGER, VINCE
RAIN, MICHAEL WAYLAND and BRENDA MCTAVISH OF
THE ORDER OF AN EXECUTIVE OFFICER ISSUED BY
ALBERTA HEALTH SERVICES ZONE 4 - EDMONTON
DATED AUGUST 4, 2017, AS AMENDED

DECISION OF BOARD

Hearing date

December 21, 2017

Appearances

For the Appellants:

Joe Langford, Agent for the tenants/appellants
Darrell Ryhorchuk, tenant, Unit 210 (Appeal No.14-2017)

For the Respondent

Linda Svob, counsel for Alberta Health Services (“AHS”)
Meaghen Allen, Executive Officer, AHS

Sitting for the Public Health Appeal Board

Denis Lefebvre, Chair
Wendy Lickacz, Vice-chair
Linda Klein, Member

Decision of the Board

- [1] The August 4, 2017 order to vacate (the “August Order”) of AHS Executive Officer, Meaghen Allen (“Allen”), as amended November 29, 2017, is **varied** for the reasons provided bellow.

Background/Facts

- [2] On June 20, 2017 Allen issued an order (the “June Order”) to the Owner of the housing premises located at 9322 149 Street, Edmonton, Alberta (the “Premises”).
- [3] The Order was in regards to the common areas of the Premises as well as suites 101, 102, 103, 104, 106, 107, 109, 110, 111, 201, 203, 204, 205, 206, 207, 209, 210, 211, 301, 302, 303, 304, 305, 306, 307, 309 and 311.
- [4] The June Order required the owner to make extensive repairs to the Premises (the “Work”), too numerous to list here.
- [5] Following a subsequent inspection of the Premises, Allen issued and served the August Order upon all occupants of the Premises on the basis that:
- (a) Violations as outlined in the June Order had not been addressed and the Premises did not meet the Housing Regulations and Minimum Housing and Health Standards.
 - (b) Asbestos containing materials were found within the Premises and numerous building materials would need to be abated and/or removed in order to carry out the required repairs outlined in the June Order; and
 - (c) The aforesaid conditions could become injurious or dangerous to the public health.
- [6] The August Order stipulated that the Premises were to be vacated on or before August 31, 2017 if the work listed therein was not completed.
- [7] By letter dated August 28, 2017 (the “Letter”), Allen extended the August Order to September 30, 2017, as it was noted that in the last three (3) weeks (from the date of the Letter), “the required work to bring the building into full compliance has been occurring.”
- [8] The Appeal Secretariat received a Notice of Appeal from the following:
- (a) Joe Langford, tenant, dated August 17, 2017;
 - (b) Tenants of units 102, 103, 111, 201, 202, 206, 209, 211, and 301; and
 - (c) Brenda McTavish, tenant of unit 310, dated August 18, 2017
- [9] On September 5, 2017, Joe Langford withdrew his appeal.

[10] The Chair heard a stay application on September 19, 2017 at 1:00 PM by telephone conference. The Chair partially stayed the August Order until the Board renders its decision in this Appeal [See Decision of the Chair, dated **September 29, 2017**].

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 1A** – June Order
- (b) **Exhibit 1B** – August Order
- (c) **Exhibit 1C** – Letter from AHS Executive Officer dated August 28, 2017
- (d) **Exhibit 1D** – Amended Order dated September 28, 2017
- (e) **Exhibit 1E** – Amended Order dated October 26, 2017
- (f) **Exhibit 1F** – Amended Order dated November 29, 2017
- (g) **Exhibit 2** – The Notice of Appeal (As particularized at paragraph [8] above)
- (h) **Exhibit 3** – A binder prepared by AHS, which contains a written brief of law and argument with supporting documents.

Legal Issues

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

- (a) Whether the violations and contraventions listed in the August Order warrant the closing of the Premises for tenant accommodation; and
- (b) Whether the August Order, as amended on November 29, 2017, should be reversed.

Grounds of the Appeal

[14] The Appellants raised the following grounds of the Appeal:

- (a) The list of violations has not been updated and, as such, much of the work listed as outstanding has been completed and/or are under way;
- (b) The remaining repairs do not require the Premises to be vacated;
- (c) Insufficient notice to vacate has been given; and

- (d) Closure of the premises for tenant occupation will result in undue hardship for the tenants.

[15] The grounds can be summarized as follows: That the order to vacate (the August Order) is not proportionate to the violations listed in the June Order, especially since the Work is being completed.

Submissions of the Appellants

[16] The Appellants submit that while they do not disagree with the violations and the Work pursuant to the June Order, the evidence as presented by AHS (and here they are referring to the photos found at Tab 5 of Exhibit 3) is incomplete because some of the repairs have been completed, which is not reflected in that evidence.

[17] Overall, most of the Work has been done, but the problem is that some tenants are causing damage just as quickly as the Work is being completed, which is frustrating to say the least. Many tenants, it was explained, are problem tenants and eviction is not always easy or timely. Moreover, many visitors come to the Premises and cause damage.

[18] The Appellants explained that the Owner does her best to maintain the Premises, but has difficulty managing the Premises because of tenant issues and the costs associated with repairs. However, as of late, she has been putting extra effort to deal with tenants and make the necessary repairs in a timely manner.

[19] Currently, there are only nine (9) units rented –all other units are vacant, which makes repairs easier to complete. Those nine (9) units include: unit 101, 104, 106, 204, 206, 210, 307, 310, 311. Of those, there are tenants who are on their way out, which would leave only a handful of tenants.

[20] The Appellants presented to the Board a review of each of the affected units (per the June Order) as well as an overview of the common area of the Premises by following the chart found at Tab 1 of Exhibit 3. Since the information contained in said chart is dated as at October 27, 2017, the Appellants provided the following update:

- (a) Unit 102: All work has been completed.
- (b) Unit 103: All work has been completed.
- (c) Unit 111: List of outstanding items is accurate.
- (d) Unit 201: All work has been completed, except for the fan cover, which is still missing.
- (e) Unit 206: All work has been completed except perhaps for the watertight joint between the washroom floor and bathtub.
- (f) Unit 209: The deficiency list is accurate except for the following: patio screen has been replaced; the bedroom window has been replaced, as was the bedroom door;

the entrance door has been painted; bathroom caulking was repaired; ceiling has been fixed.

- (g) Unit 211: The ceiling damage is still outstanding.
- (h) Unit 301: This unit has been repaired, but the unit has been damaged. The list may not reflect the new damage that has since been caused by the tenant living in that unit.

[21] With respect to the common area, the back stairs are constantly re-painted, as vandals are regularly writing on the walls. Carpets need to be replaced and the Owner is waiting for the engineering report, as it would be reasonable to wait until any structural work is completed before changing the carpet.

[22] During cross examination, the issue of building security was discussed; needless to say, the Premises is regularly visited by vagrants and “guests” of certain tenants which often leads to damage to the common area.

[23] The Appellants find it unfair that they risk losing house and home because of issues they have no control over. The Appellants are of the view that they, as tenants, are being punished because of the Premises’ security problems and bad tenants, and because the Owner, while well-intentioned, is not tending to the Work in a timely manner. It should be noted that the Owner was asked by the tenants to attend at this hearing but did not show up.

[24] The Appellants further argue that AHS should force the Owner to promptly deal with the Work, i.e., AHS should complete the Work and back charge the Owner through her municipal taxes. Further, while the Work is being done, there is no reason why the tenants cannot continue to live in the Premises. They are therefore asking that the August Order be reversed.

Expert Evidence – Structural Engineer

[25] CMG Engineering Services Corporation (“CMG”) was engaged to conduct a structural investigation of the Premises. Mr. Clark Weber, P. Eng, (“Weber”) one of the authors of the structural engineering report for the Premises (the “Report”), was present by telephone.

[26] Weber made observations with respect to the roof, structural walls (both outer walls and inner walls) as well as the flooring. According to the report and Weber’s testimony, the outer walls appeared to be in relatively good shape with minimal signs of movement. The North and South stucco walls showed no signs of stress or movement and, as explained, since stucco is known to easily crack when there is even minimal movement, this would be an indication that the outside walls had very little movement given the fact that the stucco was still applied and without cracks.

[27] When observing the inner walls, Weber was able to observe that a number of the studs in loadbearing walls were bowed out indicating stress. The stress is caused by the recent roof repairs which were done sometime in 2008. Specifically, Weber observed that there were several king posts down the center of the roof that now support essential roof support beam. While this remediation fixed the symptoms of the roof structure shape, this added additional weight to the

loadbearing walls. Notwithstanding this, Weber noted that he did not see any change to the straight roofline which is a good indication that the building has been stable for the past several years. The outer walls appeared to be stable and the change in the floor slab elevation has created stress in the walls. In order to rectify this, Weber recommended blocking on all structural stud walls and applying plywood to the walls to create a sheer that would provide stability and strengthen the walls.

[28] With respect to the flooring structure, Weber observed that the main floor was a board concrete floor slab that lightly tied into the strip foundation with rebar. He did not see any settlement in the floor slab directly next to the outer walls.

[29] Under cross-examination, Weber confirmed that there is no imminent danger of the building collapsing. He also confirmed that the building had more or less settled by this time and that once the inner wall studs are reinforced, the building will be further stabilized. However, it will not completely stop the building from continuing to settle; there will always be movement, however slight it may be. One recommendation that is especially important per the Report is that the rain water coming off the roof be drained away from the building as to minimize the weakening of the foundation. All in all, it is important to continue to monitor the building for further settling.

Submissions of the Respondent

[30] The history of the complaints and issues that are the subject matter of the June Order is as follows:

- (a) AHS was first called to the Premises on August 15, 2016 following a complaint from one of the tenants;
- (b) AHS sent a list of violations to the Owner requiring that remediation of said violations needed to be completed on or before November 16, 2016;
- (c) On December 8, 2016, a follow-up inspection was completed. Many of the violations were still outstanding;
- (d) On December 19, 2016, AHS sent a letter to the Owner advising that all violations needed to be addressed within 30 days to avoid further action;
- (e) On January 16, 2017, another Executive Officer emailed all of the outstanding violations, some of which date as far back as 2013. The email indicated that all smoke alarms in the Premises needed to be operational by January 24, 2017. Further, the Owner was asked to provide a report with respect to bedbugs and steps that would be taken to deal with the bedbug issue;
- (f) On January 27, 2017, AHS received a call from the Owner's son-in-law advising that all work was well underway and should be completed within about 30 days;
- (g) In February 2017, AHS received complaints from tenants with respect to mould and water damage;

- (h) On March 14, 2017, AHS contacted the Owner to advise that remedial work must be completed in order to avoid further action;
- (i) On May 18, 2017, Allen became involved for the first time. It was noted that the vast majority of the violations were still not dealt with by the Owner;
- (j) On May 23, 2017, Allen sent a letter to the owner again advising her of all the work that needed to be done in order to be in compliance with the Minimum Housing and Health Standards;
- (k) On June 1, 2017, Allen attended at the Premises for an inspection. Very little had been corrected;
- (l) Further inspection was conducted on June 9, 2017 and June 13, 2017; and
- (m) On June 20, 2017, the June Order was issued.

[31] The Respondent submits that the Owner has not been dealing with the June Order in a timely manner, especially with respect to the structural and environmental issues. On November 20, 2017, AHS received a scope of work from a second environmental consultant. However, as at the date of this Hearing, the Owner had not yet retained the said consultant, nor has she hired the contractor to repair the structure of the Premises.

[32] AHS has further indicated that the Owner was required to provide regular updates with respect to the Work, which was either provided late or never provided at all.

[33] The reason the August Order is necessary is to ensure that the Premises meet minimal standards. AHS has been dealing with this file for over nine months and critical items are still not remediated. The Respondent explained that typically, AHS will look to work with an owner to ensure compliance without the need to issue an order. As was the case here, Allen provided several warnings prior to issuing the June Order. Over the next several months, Allen extended the June Order and warned the Owner that if the June Order was not complied with, the Premises would be closed to tenant occupation. It should be noted that the August Order was extended by amendment four times and the Owner is still not in compliance with the June Order.

[34] A fungal assessment was conducted by Cascade Environmental Consulting Limited ("Cascade"). Cascade issued a report dated August 16, 2017 (the "Fungal Report"). Based on the Fungal Report, every suite that Cascade was able to access showed evidence of water damage. Given the extent of the presence of water damage, fungal growth is always a concern and the same was observed in eight of the units inspected; that is, those units had fungal contamination that posed a danger to public health. The recommendations by Cascade are quite extensive. Given the typical fungal contamination and water damage/staining throughout the kitchens and bathrooms of the premises, Cascade recommends that the finishes within the kitchens and bathrooms within every suite be removed down to structure and any fungal contaminants building substrates be removed and cleaned by a qualified hazardous material contractor utilizing exploratory techniques to determine the extent of the contamination and remove additional substrate materials if necessary. This, according to the Fungal Report, includes removal of all

kitchen counters as water has likely penetrated into the drywall and under/behind the counters in any areas where water damage or staining is present.

[35] AHS also explained that the Owner sought a second opinion, as the recommendations provided by Cascade were, in her view, too extensive and would require unnecessary stripping of walls down to the studs. Environmental Monitoring Solutions (“EMS”) was asked to provide a scope of work and quote. The assessment and remediation strategy proposed by EMS is less intrusive and more cost effective. However, as explained earlier, the Owner has not yet formally retained EMS to complete the Work. As such, fungal remediation remains outstanding.

[36] The Respondent presented a chart listing the violations and next steps for both AHS and the Owner (updated to October 27, 2017). The document was entered as **Exhibit 4** – Work chart for all units in the Premises. This chart was provided to the Owner to help her better manage the Work and reporting requirements to AHS.

[37] AHS provided the Board with an overview of the state of the units that are the subject matter of this Appeal. Those suites that are deemed to be uninhabitable include unit 106, and the units that are currently “guttled”, being units 103, 109, 203, 211, 302, 303, 304, and 305.

[38] With respect to the common areas of the Premises, the Respondent confirmed that the Owner has addressed all critical issues. Asbestos abatement was completed using appropriate health and safety protocols. The only outstanding concerns include the carpets and the back stairs. However, the carpets cannot be changed until the structural work is completed. It is also anticipated that the stairs will also be repaired at that time.

[39] The Respondent explained that AHS wants the tenants out of the Premises while the Work is being completed, because none of the suites meet minimum housing standards. However, the Owner represented to AHS that the Work would be done quickly on a unit-by-unit or floor-by-floor basis. As such, AHS was comfortable, per its risk assessment, in allowing tenants to move into other suites on a temporary basis, notwithstanding that the unit moved into did not meet minimum housing standards. Tenants would then be moved into the repaired units while there units were similarly repaired until each unit was brought into compliance. Since the Work appeared to be progressing, Allen extended the August Order.

[40] The poor conditions of the Premises render it unsafe for any person to reside in the building until repair work is completed and the Work cannot be completed unless the units are vacant. Moreover, given the extent of the violations that have not yet been remedied despite ongoing effort by AHS to affect remediation, the Respondent submits that August Order should be confirmed.

Analysis/Reasons

[41] The Appellants do not challenge the authority of the Executive Officer to issue the June Order and the August Order, as amended from time to time. The question before the Board is whether the August Order should be reversed or varied to reverse the requirement that the Premises be vacated until the work is completed.

[42] Unfortunately, the Owner was not present to testify as to the steps she has taken and/or will be taken to complete the Work in the timely manner. The Board is satisfied, based on the evidence provided during the Hearing, –that the violations are extensive and the Owner has not taken the necessary steps to remedy those violations within the time frame imposed by AHS. AHS has provided the Owner with multiple opportunities to work with Executive Officers to put a plan and timeline in place, but to no avail. Extensive repairs continue to be outstanding.

[43] The Board agrees with the Appellants that repairs can be completed while they continue to reside in the Premises. The Board rejects the Respondent’s submissions that the health conditions of the Premises require the removal of the tenants while the Work is underway (as explained at paragraph [39] above). This is inconsistent with the evidence and also inconsistent with the multiple amendments of the August Order to extend the date to vacate the Premises.

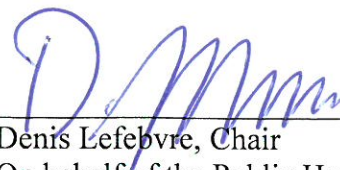
[44] However, there comes a time when the Owner has to bring the Premises to the requisite standards pursuant to the Minimum Housing and Health Standards. The evidence shows that the Owner has failed to remedy the violations in a timely manner. Regardless of the excuses and explanations provided by the Appellants, including bad tenants and security issues, the Owner is fully responsible to comply with the *Public Health Act* and the Regulations. Failing to do so puts the public health at risk, which is the case here.

[45] The Board is cognisant of the hardship caused to the tenants because of issues beyond their control. Unfortunately, the remedies they are ultimately seeking do not lie with this Board, but in a possible action against the Owner. To that end, the tenants may wish to seek legal counsel.

Conclusion

[46] After having reviewed the evidence and arguments brought before it, the Public Health Appeal Board has ruled that the August Order of Executive Officer, Allen, as amended November 29, 2017, is varied as follows:

1. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
 - a. Ensure all work required in the Order of an Executive Officer dated June 20, 2017 and the letter sent to the Owner from Environmental Public Health dated May 23, 2017, (hereinafter referred to as the “Work”) are completed.
 - b. Provide AHS office with a written detailed plan(s) outlining when the Work will be done and by whom.
 - c. Provide AHS officer with weekly updates on the status of the Work and confirmation of the Work completed.
2. That the above-noted premises be vacated on **March 28, 2018**, if the Work is not completed to the satisfaction of an Executive Officer of Alberta Health Services.
3. Should the Work not be completed per paragraph 2 above, the said premises shall remain closed for tenant accommodation purposes until such time as the Work is completed to the satisfaction of an Executive Officer of Alberta Health Services.



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

Date: February 16, 2018