

PUBLIC HEALTH APPEAL BOARD

IN THE MATTER OF THE *PUBLIC HEALTH ACT*,  
CHAPTER P-37, R.S.A. 2000 AND ITS *REGULATIONS*  
AND AN APPEAL BEFORE THE  
PUBLIC HEALTH APPEAL BOARD BY MARSHALL KRAWCHUK  
OF THE ORDER OF AN EXECUTIVE OFFICER  
ISSUED BY ALBERTA HEALTH SERVICES  
ZONE 5, ST PAUL  
DATED NOVEMBER 16, 2016  
TELECONFERENCE HEARING HELD JANUARY 31, 2017

**Appearances**

Marshall Krawchuk, Appellant

Tessa Gregson, Legal Counsel, Alberta Health Services/Respondent

**Introduction**

The Order of an Executive Officer dated November 16, 2016 ("Order") was issued pursuant to the *Public Health Act* and its *Regulations* regarding a residential rental property located at 5410 54 Street, St. Paul, Alberta ("Premises").

The Order directed the Appellant to immediately undertake work on the Premises and the occupants to vacate on or before November 24, 2016.

The Board received the Notice of Appeal on December 16, 2016.

The Board set an appeal hearing date for February 8, 2017 in St. Paul and a telephone conference Preliminary Hearing for January 27, 2017. The Appellant did not attend the Preliminary Hearing. The Board heard evidence from Counsel for Alberta Health Services. The Appellant advised the Board Secretariat immediately after the Preliminary Hearing that he had not attended due to technical difficulties calling into the conference line. The Preliminary Hearing was rescheduled to January 31, 2017 and proceeded with both the Appellant and Counsel for Alberta Health Services attending.

The Board decided to release the February 8, 2017 hearing date after the Preliminary Hearing on January 27, 2017 and before learning about the Appellant's technical difficulties calling into the Preliminary Hearing.

**Issues**

The Board advised the parties prior to the Preliminary Hearing that it wished to hear evidence and submissions regarding two matters as follows:

1. The timing regarding when the Board received the Notice of Appeal from the Appellant. The Public Health Act requires an Appellant to file a Notice of Appeal within 10 days of receiving notice of the Order.

The Board may extend this 10 day period if it finds it appropriate to do so.

2. Clarification of the Appellant's grounds of appeal as the writing on the Notice of Appeal could not be interpreted. Depending on the grounds of appeal, the Board may consider whether it had jurisdiction to hear the matter being appealed prior to commencing the scheduled hearing for February 8, 2017.

### **Appellant's Submissions**

The Appellant provided receipts showing items purchased for the work required on the Premises. He also provided a blood pressure reading.

The Appellant confirmed that he received verbal notice of the Order on November 15, 2016 and received the written Order by way of registered mail on November 19, 2016.

He stated he did not read the information included on the Order about the appeal process and the 10 day requirement period for serving the Notice of Appeal.

The Appellant submitted that he believed he could complete the work required in the Order prior to the date when the tenants were to vacate the Premises. When Alberta Health Services posted the notice to the tenants to vacate the Premises on approximately December 5, 2016 he decided to submit an appeal. The Notice of Appeal stated "Second Notice" at the top.

The Appellant's grounds of appeal were that he wanted permission for the tenants to move back into the Premises and he did not agree with the requirement of having the Premises inspected by a Safety Codes Officer as he had used a contractor with code training to do the work required in the Order.

### **Alberta Health Services' Submissions**

Alberta Health Services provided a Canada Post document showing the Appellant signed for the Order sent by way of registered mail on November 19, 2016.

Alberta Health Services' Counsel submitted that the Appellant did not file the Notice of Appeal within the 10 day period as required in the legislation. The Notice of Appeal was served to the Board just under 30 days from when the Appellant had notice of the Order. The Appellant provided no reasonable explanation for the delay in filing the Notice of Appeal. It was Alberta Health Services' position that the Board should not find it appropriate to extend the time for filing the Notice of Appeal in these circumstances.

Alberta Health Services' Counsel advised that a notice to vacate the Premises was re-posted on the Premises on December 7, 2016 as the previous notice was no longer posted.

### Reasons

There was no dispute between the parties regarding when the Appellant received notice of the Order or that the Notice of Appeal was filed outside of the 10 day period required in section 5 (3) of the Public Health Act:

The person referred to in subsection (2) shall commence the appeal by serving a notice of appeal in the prescribed form on the Board and the regional health authority **within 10 days after receiving notice of the decision complained of**, and the notice of appeal is sufficiently served if it is left at an office of the Board or regional health authority.

The Board may extend the 10 day period if it finds it appropriate to do so as set out in section 5 (9) of the Act:

5. (9) Notwithstanding subsections (3) and (4), the Board may, if it considers it appropriate to do so, extend the time within which an appeal may be taken under subsection (3) or within which the Board must act under subsection (4).

In considering whether it is appropriate to extend the time within which the appeal may be taken, the Board considered that the Appellant did not understand the appeal process and that there was a 10 day period in which to serve an appeal.

Although the Board was sympathetic to the Appellant and his lack of knowledge about the 10 day requirement for serving the Notice of Appeal to the Board, the Board found the evidence weighed in favour of not finding it appropriate to extend the time to file the Notice of Appeal. This evidence and reasons included the following factors:

- The 31 days between when the Appellant had verbal notice of the Order and the 27 days after receiving the written Order and serving the Notice of Appeal to the Board, was excessive.
- The written Order provided to the Appellant included information about how to appeal the Order and that there was a 10 day period to serve a Notice of Appeal.
- The Appellant is a Landlord and has a responsibility to know his rights and obligations pursuant to the *Public Health Act*, including the 10 day appeal period.
- The Appellant provided no compelling reason for the delay in serving the Notice of Appeal to the Board.
- The Appellant appealed the Order when he was unable to complete the work prior to the date set out in the Order directing that the Premises be vacated and


when the second notice to vacate the Premises was posted which is not a rationale for extending time to appeal.

- The *Public Health Act* has tight time frames for appealing decisions and for hearing appeals in part because of the seriousness of the matters being addressed and the consequences of those decisions on the public. The Board should not accept significant delays in these matters without a compelling reason for the delay.

The Appellant served the Notice of Appeal shortly after the second notice to the tenants to vacate the Premises was posted on the Premises on December 5 or 7<sup>th</sup>, 2016 (the Appellant thought it was December 5 and Alberta Health Services, December 7). Had this notice been a decision of the Executive Officer, the 10 day appeal period would have commenced on that date. However, the Board finds that there was no decision to appeal on that date, merely the re-posting of the notice to vacate the Premises as the previous notice was no longer attached to the Premises.

#### **Decision**

The Board finds the Notice of Appeal was received 31 days after the Appellant received verbal notice of the Order and 27 days after receiving the written Order. The Board does not find it appropriate to extend the time for the Appellant to serve the Notice of Appeal to the Board. The appeal is dismissed.

Per:   
Julia Jones, Chair  
Sandra Sheppard, Vice Chair  
Linda Cloutier, Alternate Vice Chair  
Ike Zackaropoulos, Member

Date: February 6, 2017