

Date Issued: September 23, 2009

Indexed as: BCSSAB 10 (1) 2009

**IN THE MATTER OF THE SAFETY STANDARDS ACT
SBS 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the
British Columbia Safety Standard Appeal Board**

BETWEEN:

A Property Owner

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR DECISION

Appeal of Monetary Penalty issued under Section 40 of the Safety Standards Act

Board Member:

Keith Saddlemyer, Chair

Introduction

[1] This appeal concerns a monetary penalty issued by the BC Safety Authority (the Respondent) under section 40 the *Safety Standards Act*, SBC 2003, c.39 (the Act), for failure to comply with a Compliance Order issued under section 38 of the Act.

Issue to be decided

[2] The Board must decide whether to confirm, vary or reverse the Monetary Penalty.

Background

[3] On September 23, 2008, the Respondent was advised by a tenant of wiring problems at a rental property owned by the Appellant. A provincial safety officer employed by the Respondent advised the Appellant to have the necessary work done by a registered electrical contractor in accordance with the Act.

[4] On October 17, 2008, the tenant advised the safety officer that some electrical work had been done but electrical problems continued. As a result of safety concerns expressed by the tenant, the safety officer advised the Appellant, on October 20, 2008, that an inspection of the electrical work would be conducted.

[5] On October 21, 2008, a safety officer inspected the property and provided a Certificate of Inspection directly to the Appellant on the same day. The Certificate of Inspection noted that electrical work had been performed at the premises without a permit and, among other non-compliances, the existence of damaged circuitry and improperly maintained electrical equipment. The Certificate of Inspection directed the Appellant to hire a registered contractor to rectify the non-compliances before October 28, 2008. It described the work which a contractor was required to perform as follows:

1. megger tests to be performed on all branch circuits and corrections to be made where necessary;
2. all broken or worn devices to be replaced where necessary; ensure that devices are compatible with aluminum branch circuit conductors and all boxes are adequately secured with covers in place;
3. livingroom area branch circuit non-functional; occupant utilizing extension cords to supply equipment in this area; to be corrected as necessary;
4. improper wiring methods utilized for installation of ceiling light/fan fixture to be corrected;
5. dedicated branch circuit to be installed for built-in air conditioner;
6. main panel circuit directory to be completed and legible; install filler for unused opening in cover;
7. missing part for service head fitting to be installed.

[6] On October 28, 2008, the safety officer was advised by the Appellant that an electrical contractor had not been hired to do the work.

[7] On November 3, 2008, the safety officer delivered a Compliance Order to the Appellant's residence which stated that electrical work had been done at the rental property without a permit and that unsafe, non-compliant wiring had been identified on the Certificate of Inspection. It cited non-compliance with section 71 of the Act, which

prohibits the performance of regulated work unless a person is licensed or authorized under the Act; section 12 of the Safety Standards Regulation, which requires a permit to be obtained before doing regulated work; and BC Electrical Code Regulation 2-2300, which requires electrical equipment to be maintained in a safe and proper condition.

The Compliance Order further required the Appellant to immediately obtain the services of a licensed electrical contractor to correct all non-compliances noted on the Certificate of Inspection and stated that, prior to November 14, 2008, the contractor was required to obtain a permit and provide the Respondent with a declaration stating that all wiring was safe or disconnected from the electrical supply. The Appellant was also ordered to provide the Respondent, before November 14, 2008, with the name of the individual who had performed electrical work without a permit.

[8] On November 18, 2008, the Respondent served a Notification of Recommendation for a Monetary Penalty on the Appellant. It stated that the penalty was recommended for contravention of the Compliance Order.

[9] On November 20, 2008, the Respondent had no record of a permit being obtained for the work required by the Compliance Order.

[10] On May 20, 2009, the Respondent served a Notice of Monetary Penalty on the Appellant, ordering him to pay a penalty in the amount of \$750.00 by June 30, 2009 . The Notice stated that the monetary penalty was being issued for failure to comply with the Compliance Order.

[11] The Notice was re-issued and served on the Appellant by registered mail on July 2, 2009 because the Respondent was unable to confirm delivery of the original. The payment date was amended to August 17, 2009.

[12] On August 4, 2009, the Appellant appealed the Monetary Penalty by filing a Notice of Appeal with the Board.

Position of the parties

[13] The Appellant states in the Notice of Appeal that he did not obtain an electrical contractor until after receiving the Monetary Penalty Notice on July 2, 2009 and that the contractor attended the rental property to fix the electrical wiring by installing a "W.H.Cap" on July 21, 2009. He appeals the monetary penalty because the electrical

wiring was fixed and made safe before the date on which the penalty was due to be paid. He also states that he did not receive a copy of the Compliance Order.

[14] The Respondent states that the Monetary Penalty was imposed in accordance with the Act and there is no basis for it to be varied or set aside. He states that the Appellant permitted regulated electrical work to be performed on his property by unlicensed person(s) and/or without the necessary permit in contravention of sections 27, 63, 64, 66, 68, 69 and 71 of the Act; section 12 of the Safety Standards General Regulation and section 4 of the Electrical Safety Regulation. He further states that the Appellant failed or refused to comply with the lawful and reasonable requirements of a Compliance Order issued in accordance with section 38 of the Act.

Analysis

[15] The sections of the Act and regulations relied on by the Respondent in this appeal are intended to avoid or reduce the risk to safety by ensuring that persons doing regulated work are qualified and that regulated products are installed, operated and maintained in compliance with the Act and regulations.

[16] Copies of the Certificate of Inspection and Compliance Order were served on the Appellant in accordance with section 80 of the Act.

[17] The Appellant does not deny that he permitted regulated electrical work to be performed on his property contrary to the Act and regulations as stated by the Respondent. Furthermore, he provided no evidence to support his statement that the electrical wiring is safe; no evidence was produced to show that the non-compliances identified on the Certificate of Inspection were rectified or that he complied with the subsequent Compliance Order. A copy filed by the Appellant of an electrical contractor's undated invoice, describing the invoiced services as "install new W.H. Cap", does not provide proof that a permit was obtained to rectify the non-compliances and a contractor's declaration submitted to the Respondent as required by the Certificate of Inspection and Compliance Order.

[18] There is no indication in the information provided by the Appellant that the decision to impose a Monetary Penalty was not made in accordance with section 40 of the Act.

Decision

[19] For the reasons noted above the Monetary Penalty is upheld and the appeal is denied.

A handwritten signature in black ink, reading "Keith Saddlemyer". The signature is written in a cursive, flowing style with a large initial 'K' and a long, sweeping underline.

SIGNED:

Keith Saddlemyer, Chair