

**Date Issued: November 30, 2018  
Appeal No. SSAB 24-2018**

Indexed as: BCSSAB 24 (1) 2018

**IN THE MATTER OF THE *SAFETY STANDARDS ACT*,  
S.B.C. 2003, Chapter 39  
AND IN THE MATTER OF an appeal to the  
BRITISH COLUMBIA SAFETY STANDARD APPEAL  
BOARD**

**BETWEEN:**

**Owners of a Residence**

**APPELLANTS**

**AND:**

**Technical Safety BC**

**RESPONDENT**

**REASONS FOR DECISION**

**Safety Standards Appeal Board:**

**Jeffrey Hand**

**Representing the Appellant:**

**Robert Doran**

**Technical Safety BC:**

**Kimberley Fenwick**

**INTRODUCTION**

[1] The Appellants have filed an application seeking to extend the time period within which to file an appeal from the decision of the Safety Manager to issue a Monetary Penalty. This application was conducted both by way of written submissions filed by the parties and by oral submissions received during an Appeal Management Conference held on November 28, 2018.

[2] The factual background in this appeal is relevant to this application and is set out below.

## **FACTS**

[3] The Appellants are the owners of a residence located in Langley, British Columbia (the "Property").

[4] The Property has been rented to tenants since approximately 2015. The Appellants commenced proceedings before the Residential Tenancy Branch in early 2016 to remove the tenants from the Property as a result of failure of the tenants to pay rent.

[5] In or about March, 2016 Technical Safety BC ("TSBC") received a complaint from the tenant concerning the condition of electrical equipment in the Property which resulted in an inspection by a Safety Officer. That inspection identified items of non-compliance, principally associated with the electrical panel, and TSBC issued a Certificate of Inspection dated May 20, 2016 requiring the Appellants to remedy these non-compliances. This was followed by a Compliance Order, CO-2016-0058 dated July 8, 2016.

[6] On August 12, 2016 a permit was obtained by an electrical contractor to perform the remedial work. However, the Appellants did not authorize that work to proceed because the estimated repair cost, \$1,500.00, was unacceptable to the Appellants.

[7] A Safety Officer spoke with the Appellants in December, 2016 to enquire as to why the work had not yet been completed. The Appellant advised that it was now his intention to demolish the Property and to construct a new home and accordingly, he would not be proceeding with remedial work. The Appellant advised that he would be out of the Country from mid-January to April, 2017.

[8] A further follow-up was made by Technical Safety BC in July, 2017 when it was determined that the Property had not yet been demolished and that the electrical service was still in operation. No remedial work had been performed.

[9] On September 5, 2017 the Appellants were advised in writing that the Safety Manager was considering imposing a Monetary Penalty in the amount of \$24,000.00 for the Appellants' failure to correct the deficiencies identified in the Compliance Order issued in May of 2016. The Appellants were advised that they could respond to the notice of the pending Monetary Penalty

within 14 days with any information that the Appellants wanted the Safety Manager to consider before issuing a Monetary Penalty.

[10] The Appellants responded in an email dated September 14, 2017 stating that the electrical non-compliances at the Property had been corrected. This was a false statement. The electrical non-compliances in fact were not repaired until the Summer of 2018.

[11] On November 9, 2017 the Safety Manager issued a Monetary Penalty in the amount of \$24,000.00. That notification advised the Appellants that an appeal could be made to the Safety Standards Appeal Board within 30 days of the date of the Monetary Penalty.

[12] The Appellant responded to Technical Safety BC on November 26, 2017 stating, among other things that the electrical non-compliances had been dealt with and expressing his displeasure that the problems with his former tenant had cost him a great deal of money and he did not think it was fair to receive a Monetary Penalty.

[13] On January 17, 2018 TSBC sent the Appellants a demand letter stating that the Monetary Penalty amount was due and owing.

[14] On April 18, 2018 Technical Safety BC obtained a Certificate of Judgment in the Provincial Court of British Columbia against the Appellants in the amount of the Monetary Penalty.

[15] On May 16, 2018 an Order for Seizure and Sale was issued by the Provincial Court seeking to recover the amount of the Judgment.

[16] On June 20, 2018 the Provincial Court Judgment was registered as a Charge on the Title of the Property.

[17] In or about the same time it seems the Appellants retained an electrical contractor to carry out the remedial work. This work was completed on June 26, 2018.

[18] Counsel for the Appellants, Robert Doran, advised during oral submissions regarding his Application, that he was contacted by the Appellants in or about late August, 2018 following

which he made a Freedom of Information Request of Technical Safety BC to obtain documents relating to this matter.

[19] On October 30, 2018 Mr. Doran filed an appeal seeking to set aside the Monetary Penalty.

## **ANALYSIS**

[20] At issue in this application is whether the Appellants should be permitted to proceed with an appeal that was filed on October 30, 2018, nearly one year after the Monetary Penalty was issued on November 9, 2017.

[21] Section 24 of the *Administrative Tribunals Act* states:

### Time Limit for Appeals

24(1) A Notice of Appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the Tribunal's enabling act provides otherwise.

24(2) Despite subsection (1), the Tribunal may extend the time to file a Notice of Appeal, even if the time to file has expired, if satisfied that special circumstances exist.

[22] The *Safety Standards Act* does not provide otherwise and in fact at Section 44 of the *Act* adopts Section 24 of the *Administrative Tribunals Act*. In addition, the Rules of Practice and Procedure of this Board echo the provisions relating to time extensions at Rule 12(3) allowing time extensions only where the Board is satisfied that special circumstances exist.

[23] Counsel for the Appellants, in his written submissions, took the position that a Notice of Appeal in this matter was not filed within the requisite 30 days of the date of the Monetary Penalty because:

1. The Appellants had suffered the financial consequences of not receiving rent in relation to the Property owing to the dispute with their tenant.
2. The Appellants felt their appeal would stand a greater chance of success if they completed the remedial electrical work required under the Compliance Order before filing their appeal.

[24] In his oral submissions counsel for the Appellants indicated that the Appellants were no longer saying that the financial consequences of having incurred the lost rental income was a

reason for not commencing the appeal but instead was now suggesting that the Appellants did not file the appeal in a timely way because of a "lack of knowledge" that they were required to take this step. The Appellants were apparently away in India from early January, 2018 until April, 2018.

[25] The Respondent says that the Appellants have failed to identify any special circumstances that prevented them from filing their appeal at an earlier point in time and says that a delay of nearly 12 months is simply too long of a delay to allow an appeal to now be brought.

[26] This Board has previously held that the term "special circumstances", as it is used in both the Board Rules of Procedure and in the *Administrative Tribunals Act*, refers to circumstances beyond the control of the Appellant that prevented an appeal to be filed in a timely way notwithstanding the Appellant's intention to bring an appeal.

[27] In the application before me there is an absence of any affidavit evidence from the Appellants stating that they had an intention of bringing an appeal from the Monetary Penalty or stating that they were somehow prevented from doing so. No special circumstance have been identified. I am left only with the submissions of counsel which I will deal with below.

[28] There is no evidence before me that the Appellants were unaware of the requirement to appeal the Monetary Penalty within 30 days. Indeed, counsel for the Appellants conceded that this information was clearly stated on the Monetary Penalty itself. The Appellant responded to TSBC within days of receiving the Monetary Penalty by way of email stating that the repair work had been completed but not indicating any intention to challenge the Monetary Penalty.

[29] In terms of the Appellants' apparent absence from Canada, between January to April, 2018, I note that notice of the Monetary Penalty was received at least two months prior to the Appellants' departure, leaving them ample time to file an appeal had they chosen to do so. It is also noteworthy that no steps were taken to file the appeal upon their return in April, 2018.

[30] In terms of the submission made by counsel that the Appellants felt that they should first repair the electrical non-compliances before filing the appeal, in the Board's view, this submission suffers from a number of inconsistencies.

[31] Without accepting that believing that repair work should be completed prior to filing the appeal would be a valid reason for not taking the required steps to preserve one's right of appeal, the Board notes that the assertion of this belief lacks credibility. Firstly, it is inconsistent with the Appellant's statement in his email dated November 17, 2017 that the repair work had in fact already been completed.

[32] It is also inconsistent with the fact that the repair work was completed by the end of June, 2018, but even then the Appellants waited a further four months before filing their appeal on October 30, 2018.

[33] The Board also notes that there were any number of notifications that presented opportunities for the Appellants to take steps to file an appeal if they indeed took issue with the Monetary Penalty:

- (a) the Appellants were notified on January 17, 2018 that the Monetary Penalty was still outstanding;
- (b) on or about April 18, 2018 they would have learned that a Judgment had been registered in the Provincial Court of British Columbia; and
- (c) on or about June 20, 2018 they would have learned that a Charge had been registered against the Title of the Property.

[34] Despite all of the foregoing the Appellants waited until October 30, 2018 to attempt to appeal the Monetary Penalty.

[35] The Board finds that there are no special circumstances that exist that would allow an appeal to be brought at this late time. The Appellants have not established that they were prevented from filing the appeal by any reason other than their own inaction and disregard for the regulatory scheme relating to regulated electrical equipment.

[36] Moreover, the evidence discloses a pattern of delay and misrepresentation on the part of the Appellants. The Appellants did not take steps to respond to the Compliance Order until more than two years had passed. On at least two occasions they stated that repairs had been completed at the Property when in fact that had not been the case. They also indicated the Property was to have been torn down. None of these statements were correct.

[37] Lastly, the time limits set out in the applicable legislation regarding the filing of appeals are intended to provide for the efficient and orderly disposition of those appeals. To allow an appeal to be brought nearly one year later than it ought to have been, especially without evidence of special circumstances to explain that delay, would, in the Board's view, bring the administration of justice into disrepute.

[38] For all of the foregoing reasons the Board is denying the Appellants' request for an extension to file an appeal in relation to the Monetary Penalty.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

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Jeffrey Hand, Chair  
Safety Standards Appeal Board