THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LR08-004
Order LR08-04

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Vincent Appleton against Orders No. LD08-119 and LD08-120 of the Director of Residential Rental Property, dated January 24, 2008.

BEFORE THE COMMISSION
on Thursday, the 28th day of February, 2008.

Maurice Rodgerson, Chair
John Broderick, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Vincent Appleton against Orders No. LD08-119 and LD08-120 of the Director of Residential Rental Property, dated January 24, 2008.

Participants

1. Appellant: **Vincent Appleton, representing himself**

2. Respondent: **Kings Square Non-Profit Housing Corporation**

Bill Campbell, representative
David MacLeod, legal advisor

Witnesses:
Evelyn Monkley
Chris Gallant
Andrew Hickok
Doug Feehan
Mark Dennis
Cody Waye

Reasons for Order

1. Introduction

Vincent Appleton (the Appellant) has appealed Order LD08-119 (Exhibit E-10) and Order LD08-120 (Exhibit E-22) issued by the Office of the Director of Residential Rental Property (the Director) on January 24, 2008. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-11) on January 25, 2008.

The Director's Order LD08-119 concerns the January 8, 2008 *Application by Lessee to Set Aside Notice of Termination* (Form 6), filed by the Appellant pursuant to section 16 of the ***Rental of Residential Property Act***, R.S.P.E.I. 1988, Cap. R-13.1 (the ***Act***). The Appellant filed this Form 6 in response to a January 4, 2008 *Notice of Termination by Lessor of Rental Agreement* (Form 4) issued to the Appellant by Kings Square Non-Profit Housing Corporation (the Respondent).

The Director's Order LD08-120 concerns an Application by Lessor for Earlier Termination (Form 5), filed by the Respondent on January 7, 2008 pursuant to subsection 14(3) of the ***Act***.

This appeal concerns residential premises located at 292 University Avenue, apartment 201 (the apartment).

This appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday, February 7, 2008.

2. Background

According to the Director's Orders LD08-119 and LD08-120, the Appellant's written rental agreement commenced in February 2007 and is effective until February 28, 2008. No copy of this rental agreement was filed with the Commission, and no evidence concerning the term of the agreement was presented at the hearing before the Commission. The Director's Orders also state that the rent is set at 25% of the Appellant's income, the rent is payable on the first day of each month and the Appellant paid a security deposit of $275.00.

The evidence before the Commission reveals that the Appellant was served with three documents commencing January 4, 2008. First, the Appellant was served with the original Form 4 notice of termination. Shortly thereafter, a second Form 4 notice of termination with the word "Amendment" written at the top was served on the Appellant and a Form 5 application for earlier termination was also served on the Appellant.

The Respondent informed the Commission that the Appellant was served with documents to terminate the rental agreement, because the Appellant was identified as one of a number of tenants who were disrupting the quiet enjoyment of the apartment building. The Respondent hired a security company to continuously monitor the apartment building. Several security guards testified at the hearing.

The Appellant informed the Commission that the Respondent's allegations against him were false. He noted that there was a fire in the apartment next to him and that he understood there had been a "crystal meth lab" in that unit. The Appellant noted that other tenants have violated his quiet enjoyment of the premises.

3. Decision

The Commission allows the appeal for the reasons that follow.

The core of the Appellant's case is that he did not disrupt the quiet enjoyment of the apartment building. He did not play loud music late at night because this would interfere with his young son's sleep. He noted that he does not own a stereo. When he listens to music on his computer, or plays games on his computer late at night, he always uses a headset. He noted that his son often watched TV and the sound of the TV was often too loud; however, the TV would be turned off by his son's 9:00 p.m. bedtime. He did acknowledge that he had confrontations with the security guards following receipt of the first Form 4 termination notice.

The core of the Respondent's case is based on the handwritten notes and log sheets presented in evidence originally before the Director and the oral testimony of the security guards presented at the hearing before the Commission.

On both the original and amended versions of the Form 4 notice of termination, the Respondent has checked the following two reasons for termination:

> *(b) – You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lesses (s.14(1)(a) of Act);*
>
> *…*
>
> *(g) – An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property (s. 14(1)(e) of Act);*

The Commission has carefully reviewed the sign in logs and the handwritten notes provided by the security guards on behalf of the Respondent.

With respect to the handwritten notes, prior to the service of the original Form 4 termination notice there is only one entry suggesting an auditory disturbance from the Appellant's apartment:

> *Jan 4 1:00 a.m. Received complaints of noise from this unit. We knocked on there [sic] door and explained to them that the level of noise was to [sic] high & they had to quiet down.*

Prior to the above noted incident, the handwritten notes concern "tracking traffic" to the Appellant's apartment, noting "numerous" short visits, "people trying to enter" the apartment without signing the log sheet, visitors leaving the apartment with cartons of cigarettes and a visitor stating that she was going to the apartment for the "sole purpose of buying smokes".

After service of the first Form 4 termination notice there are numerous entries in the handwritten notes referring to confrontations with the Appellant, noise issues and "the strong smell of weed".

A review of the log sheets provided to the Commission does not suggest any unusually high amount of visitor traffic to the Appellant's apartment.

With respect to the oral testimony of the security guards, the Commission was left with the distinct impression that the primary reason for the Respondent calling additional security guards as witnesses was to support what the head security guard had asserted rather than to testify as to their own, independent observations. In ***R***. v. ***Couture***, 2007 SCC 28, Charron J., writing for the majority, wrote in the first portion of paragraph 83:

> *83 The trial judge erred in finding that the three witnesses upon whom she relied provided any corroborative evidence. Each witness testified, in varying degrees, about being told by Darlene that David Couture disclosed information to her about the murders. This does not in any way constitute corroboration.* ***Independent evidence that supports the truth of an assertion is corroborative.*** *The fact that Darlene may have disclosed similar information to others is neither independent nor supportive of the truth of her assertions about David Couture's involvement in the murders.*
>
> [Emphasis added]

Some of the security guards testified during their direct examination (examination-in-chief) that they had read the head security guard's written statement prior to the hearing. These guards were then asked by the Respondent's representative whether they agreed with that statement. Any remaining notion that the evidence of the more junior security guards corroborated the evidence of the head security guard was shattered when the head security guard, after having completed his testimony, interjected from the back of the hearing room during the testimony of another security guard.

The Respondent's case is based heavily on the evidence of the security guards. There was no evidence put forward from other persons, for example current or former tenants, to support the Respondent's reasons set out in its Form 4 termination notices.

The Commission has not been presented with sufficient evidence to support the validity of the notices of termination or the application for earlier termination. Most of the evidence, both written and oral, from the security guards specific to the Appellant's unit was from the time period after the first Form 4 termination notice had been served on the Appellant.

While the body of evidence following the service of the notices of termination and the application for earlier termination is relevant, its relevancy is within the context of illustrating an ongoing continuation of the events leading up to the service of these documents. Prior to the service of the notices of termination and the application for earlier termination, the evidence before the Commission is insufficient, on a balance of probabilities, to warrant a finding that the Appellant's rental agreement should be terminated based on subsection 14(1)(a) and 14(1)(e) of the ***Act***.

Accordingly, the Commission allows the appeal and hereby reverses the Director's determinations in Order LD08-119 to deny the Appellant's application to set aside the notice of termination and the determination that the notice of termination is valid. The Commission also reverses the Director's determination in Order LD08-120 that the rental agreement was terminated as of noon Thursday, January 24, 2008.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Vincent Appleton against Orders No. LD08-119 and LD08-120 of the Director of Residential Rental Property, dated January 24, 2008.

Order

WHEREAS Vincent Appleton (the Appellant) appeals against Orders No. LD08-119 and LD08-120 of the Director of Residential Rental property, dated January 24, 2008;

AND WHEREAS the Commission heard the appeal in Charlottetown on February 7, 2008;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. **The appeal is allowed.**

2. **The Commission hereby reverses the Director's determinations in Order LD08-119 to deny the Appellant's application to set aside the notice of termination and the determination that the notice of termination is valid.**

3. **The Commission reverses the Director's determination in Order LD08-120 that the rental agreement was terminated as of noon Thursday, January 24, 2008.**

DATED at Charlottetown, Prince Edward Island, this 28th day of February, 2008.

BY THE COMMISSION:

Maurice Rodgerson, Chair

John Broderick, Commissioner

Anne Petley, Commissioner

NOTICE

Sections 26.(2), 26.(3), 26.(4) and 26.(5) of the ***Rental of Residential Property Act*** provide as follows:

26.(2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.

(3) The rules of court governing appeals apply to an appeal under subsection (2).

(4) Where the Commission has confirmed, reversed or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.

(5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.

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