



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

**Docket LR08-013
Order LR08-12**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by James and Janet Ross against Order No. LD08-273 of the Director of Residential Rental Property, dated July 16, 2008.

BEFORE THE COMMISSION
on Tuesday, the 26th day of August, 2008.

John Broderick, Commissioner
Brian McKenna, Vice-Chair
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by James and Janet Ross against Order No. LD08-273 of the Director of Residential Rental Property, dated July 16, 2008.

Participants

All participants were heard before the Commission via telephone conference call.

- | | | |
|----|------------------------------|--|
| 1. | For the Appellants: | James Ross |
| 2. | Respondents: | Brian Webster
Jennifer Reagan |
| | Respondents' Counsel: | Nancy Key, Q.C. |

Reasons for Order

1. Introduction

The Appellants James and Janet Ross (the Ross family) have appealed Order No. LD08-273 issued by the Office of the Director of Residential Rental Property (the Director) on July 16, 2008. The Island Regulatory and Appeals Commission (the Commission) received the Ross family's Notice of Appeal (Exhibit E-9) on August 5, 2008.

The Respondents Brian Webster and Jennifer Reagan (the Webster-Reagan family) filed a Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) dated May 21, 2008 to be effective August 1, 2008. The Form 4 Notice of Termination states that the Webster-Reagan family wants possession of the dwelling located at 25 Church Hill Avenue, North Rustico (the premises) for occupation for themselves and their children.

The Ross family filed a Form 6 Application by Lessee to Set Aside Notice of Termination (Form 6) dated May 30, 2008.

The matter was heard before the Director on June 27, 2008.

In Order LD08-273, the Director ordered that the Form 6 application to set aside the Notice of Termination be denied. The Director determined that the Form 4 Notice of Termination be effective as of August 1, 2008. The Director ordered that the rental agreement between the Ross family and the Webster-Reagan family be terminated as of August 1, 2008 and the Ross family were to vacate the premises on or before this date.

This appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, August 25, 2008.

2. Evidence

The position of the Ross family is that it is inappropriate for their family to be displaced from the premises in order to allow the Webster-Reagan family to be able to vacation in the premises. The Ross family submit that a termination of the rental agreement would not be in good faith because the Webster-Reagan family seeks possession of the premises for occupation for a brief time period, namely two to four weeks vacation. Further, the Ross family submits that there was confusion and indecision with respect to the Webster-Reagan family's plans for the premises. The Ross family notes that the Webster-Reagan family had orally agreed to extend the written lease to August 1, 2008 and they then withdrew an earlier Notice of Termination predating the May 21, 2008 document.

The position of the Webster-Reagan family is that they provided the Ross family with the required statutory notice by serving them with the Form 4 Notice of Termination.

3. Decision

The Commission denies the appeal for the reasons that follow.

In Order LD08-273, the Director's rental officer provided the following reasons for the Director's decision:

The issue before the Officer is whether the lessors have acted in "good faith". The phraseology of "good faith" as defined by Black's Law Dictionary, Revised Fourth Edition, 1968 means "Honesty of intention". The question is whether the lessors have acted with honest intentions.

During the hearing, the lessors stated that the Notice of Termination dated May 21, 2008 was served to the lessees because they wanted possession of the unit for themselves and their children. The lessors stated that they currently reside in Peoria, Illinois which is their primary residence. The lessors stated that they are expecting their third child on or about August 17, 2008 and after their child is born, they will move into the unit and reside in the unit until on or about October 31, 2008.

Based on the information and evidence before me, the Officer finds that the lessors' Notice of Termination dated May 21, 2008 served to the

lessees is valid. Also, the Officer finds that pursuant to the provisions of Section 15.(1) (a) of the **Act**, the lessors have a right to possession of the residential premises for the stated purpose. The lessees have not provided any substantive evidence to support the claim that the lessors are not acting in good faith in order to evict the lessees from the unit. With respect to the issue raised by the lessees regarding the length of time that the lessors will be residing in the unit, the **Act** is silent on this and therefore the Officer has no discretion in the determination of what is a reasonable length of time that the lessors must reside in a unit. With respect to the lessees' evidence regarding the sale of their home and the purchase of another residence, the Officer finds that this evidence is not relevant to the reason indicated on the Notice of Termination dated May 21, 2008.

As a result, the lessees' application with respect to setting aside the Notice of Termination dated May 21, 2008 is hereby denied.

Subsection 15(1) of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1(the **Act**) reads as follows:

15. (1) Where the lessor in good faith seeks to

(a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;

(b) convert the premises to a use other than residential use;

(c) renovate the premises where the nature of the renovations are advised to the lessee and are such that the renovations cannot be carried out while the lessee occupies the premises;

(d) demolish the premises,

the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.

Emphasis added.

In the Form 1 Standard Form of Rental Agreement signed by the Ross family and the Webster-Reagan family, the following is noted with respect to the term of the agreement:

This agreement is to begin on the 1st day of September, 2007, and end on the 30th day of April, 2008. Or thereafter as mutually agreed.

The underlined portion cited above was hand printed on the agreement.

The Commission notes that the agreement had been orally extended to August 1, 2008 and the Notice of Termination at the centre of the present appeal provides more than 2 months notice of this extended termination date.

The evidence satisfies the Commission that the Webster-Reagan family's desire to regain possession of the premises for their occupation was exercised in good faith.

The Commission finds that there is nothing in the **Act** to exclude the application of subsection 15(1) where the evidence reveals that possession of the premises for occupation may be for a short period of time. The Commission takes notice that seasonal use of property owned by non-residents is quite common on Prince Edward Island. Accordingly, if it were the intent of the Legislature that subsection 15(1) was only to apply where a lessor sought possession of the premises for long term occupation, the Commission would expect the **Act** to have been drafted accordingly.

Accordingly, the appeal is denied and the Commission confirms Order LD08-273 of the Director. The May 21, 2008 Notice of Termination is valid, and the rental agreement therefore was lawfully terminated on August 1, 2008.

As the evidence before the Commission indicates that the Ross family is still residing in the premises, the Commission hereby orders the Ross family to vacate the dwelling located at 25 Church Hill Avenue, North Rustico on or before 12 noon on August 28, 2008.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by James and Janet Ross against Order No. LD08-273 of the Director of Residential Rental Property, dated July 16, 2008.

Order

WHEREAS the Appellants James and Janet Ross have appealed against Order No. LD08-273 of the Director of Residential Rental property, dated July 16, 2008;

AND WHEREAS the Commission heard the appeal in Charlottetown on August 25, 2008;

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

IT IS ORDERED THAT

1. **The appeal is denied.**
2. **The Commission confirms Order LD08-273 of the Director. The May 21, 2008 Notice of Termination is valid, and the rental agreement therefore was lawfully terminated on August 1, 2008.**
3. **The Commission hereby orders James and Janet Ross to vacate the dwelling located at 25 Church Hill Avenue, North Rustico on or before 12:00 noon on August 28, 2008.**

DATED at Charlottetown, Prince Edward Island, this 26th day of August, 2008.

BY THE COMMISSION:

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Brian McKenna*

Brian McKenna, Vice-Chair

(Sgd.) *Anne Petley*

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.

IRAC144A(99/2)