



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11025
Order LR11-31**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Everett White and Mary
Saunders against Order LD11-206 issued by
the Director of Residential Rental Property
dated August 18, 2011

BEFORE THE COMMISSION
on Friday, the 14th day of October, 2011.

John Broderick, Commissioner
Michael Campbell, Commissioner
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

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BACKGROUND

On August 22, 2011 the Commission received a Notice of Appeal filed by Everett White and Mary Saunders (the Appellants). The Appellants appealed Order LD11-206 issued by the Director of Residential Rental Property (the Director) on August 18, 2011.

By way of background, the Appellants filed with the Director a Form 2 – Application for Enforcement of Statutory of Other Conditions of Rental Agreement dated July 4, 2011 seeking remedy by way of a “declaration as to jurisdiction” relating to a Seasonal Site Lease/Rental Agreement between themselves and Bayside RV Campground (Leonard Gibbons and Michael Creighton) (the Respondents).

The matter was initially heard by the Director on July 20, 2011. In Order LD11-206 the Director found:

*“...that the agreement between the parties is not governed by the **Rental of Residential Property Act** and that therefore she is without jurisdiction to make an order regarding the termination of the relationship.”*

The Commission heard this appeal on September 20, 2011. The Appellants were present and were represented by Siennah Salone. Prior to the hearing, the Respondents’ legal representative advised the Commission that the Respondents would not be present at the hearing and rely on their submissions in the hearing before the Director.

EVIDENCE

The Appellants submitted that many of the units in the campground were not registered for the road and remained at the campground year round. The Appellants submitted that they were responsible for the upkeep of their site, including mowing the lawn. They submitted that the rental agreement goes beyond a mere license to occupy. They submitted that their trailer is a mobile home and it was to be their primary residence from May to October.

The Appellants submitted that their rental agreement should be governed by the **Rental of Residential Property Act** (the **Act**).

DECISION

The Commission has determined that the appeal is denied as the agreement between the parties is not governed by the **Act**. Accordingly, the Commission upholds Director's Order LD11-206. The reasons for this decision follow.

The "Seasonal Site Lease/Rental Agreement" (Exhibit E-9) notes that the 2011 season starts on May 27, 2011 and ends on September 25, 2011. The Commission finds that term of the agreement is four months.

Section 1.(i) of the **Act** defines "mobile home":

(i) "mobile home" means a dwelling unit designed to be mobile and to be used, and that is used, as a permanent or temporary residence;

Section 1.(p)(ii) states:

(p) "residential premises" or "premises" includes

...

(ii) land rented as a mobile home site whether or not the lessor also rents that mobile home to the lessee,

but does not include premises exempted by the regulations;

Section 1 of the Rental of Residential Property Act Regulations (the Regulations) exempts various kinds of premises from the provisions of the **Act**. Section 1.(c) reads as follows:

1. The following premises are exempt from the provisions of the Act:

...

(c) premises licensed under the Tourism Industry Act R.S.P.E.I. 1988, Cap. T-3.3, except when such premises are provided as accommodation for a guest for a continuous period of one month or more; EC98-427 {eff. Jul. 4/98}

Section 1.(i) of the **Tourism Industry Act** reads as follows:

1. In this Act

...

(i) "tourism establishment" means an establishment that provides temporary accommodation for a guest for a continuous period of less than one month, and includes a building, structure or place in which accommodation or lodging, with or without food, is furnished for a price to travellers, such as a cabin, cottage, housekeeping unit, hotel, lodge, motel, inn, hostel, bed and breakfast establishment, resort, travel trailer, travel trailer park, recreational vehicle park, houseboat, camping cabin and campground;

Section 1.(b) of the Tourism Industry Act Regulations reads as follows:

1. In these regulations

(b) “campground or RV park” means a tract or parcel of land used or permitted to be used by the travelling public that provides sites for tents, trailers, or motor homes and may also be called an RV park but shall not include industrial, work or construction camps or permanent mobile home parks;

The Commission finds that, solely based on an apparently ordinary reading of the various sections of the Acts and Regulations cited above, an RV park site rented for a period of one month or more would be governed by the **Act**.

However, the **Act** is not a theoretical or academic document to be used on a rare occasion. The **Act** should not have to be tortured and twisted to achieve a just result. The **Act** is applied by landlords, tenants and the Director on a frequent basis. It is applied by the Commission, on appeal, on a regular if less frequent basis. If the **Act** needs to be interpreted from time to time, such interpretation should make sense: the various pieces of the statutory puzzle and the various notice periods must be able to fit together in at least relative harmony.

The Commission has often been guided by section 9 of the **Interpretation Act** which reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

The **Act** does not have specified objects or a preamble to guide its interpretation. However, the Commission notes the guidance given by section 10 of **the Interpretation Act**:

10. The title and preamble of an enactment shall be construed as part thereof intended to assist in explaining its purport and object.
1981,c.18,s.10.

As may be already apparent from the foregoing, the Commission favours the pragmatic and purposeful approach to the interpretation of the **Act**.

The Commission finds that an apparent ordinary reading of the germane sections of the **Act**, the **Tourism Industry Act**, and the Regulations of both Acts, could conflict with the wording of section 15(2) of the **Act**:

15(2) Notwithstanding subsection (1), where a lessor serves a notice of termination under this section respecting a mobile home site, other than where the lessee is renting a mobile home and the mobile home site under a single rental agreement, the period of notice shall not be less than six months.

While admittedly a section 15 type application may be rare in the context of an RV park or campground, a requirement of at least six months' notice would clash with a recreational tenancy rental agreement for, in the present matter, a fixed period of 4 months.

More importantly, the Commission finds that the object of the **Act** is to govern the relationship between landlords and tenants for the rental of residential property. No specific mention is made in the **Act** that the provisions of said **Act** apply to campgrounds or RV parks. The **Act** makes no provision for campground or RV park rules and thus no remedies for the breach of such rules are set out in the **Act**. A travel trailer, even a large one that is seldom moved, or a recreational vehicle, sited at a campground or RV park, amounts to a recreational residence and does not, in the Commission's view, fit in with a pragmatic statutory process designed to deal with a "residence" in the ordinary sense of the word. The **Act** provides for a statutory process and timelines that do not fit what amounts to a recreational tenancy period of some one to four months duration. Imposing such a process and timelines on a recreational tenancy could cause havoc within the tourism sector.

This is not the first time that the Commission and the Director have struggled to apply the **Act** to modern circumstances to the frustration of tenants and landlords alike. The Commission is of the belief that the **Act** needs to be reviewed and updated regularly to meet current issues that occur between landlords and tenants and to make it clear as to what situations are, and are not, covered by the **Act**. The Commission wishes to reiterate that neither the Commission nor the Director create the law; rather they have been entrusted with the day to day application and interpretation of the law as written and approved by the Legislature.

The Commission hastens to point out that although the Commission has determined that the **Act** does not apply to recreational tenancies, a remedy may be available at common law in a forum with the necessary jurisdiction.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

IT IS ORDERED THAT

1. The appeal is denied.
2. The agreement between the parties is not governed by the *Rental of Residential Property Act* and Director's Order LD11-206 is hereby upheld.

DATED at Charlottetown, Prince Edward Island, this 14th day of **October**, 2011.

BY THE COMMISSION:

John Broderick, Commissioner

Michael Campbell, Commissioner

Ferne MacPhail, 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.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141y-SFN(2009/11)