



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14006
Order LR14-10**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, made by Paula MacKinnon
against Order LD14-046 dated February 18,
2014 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 2nd day of April, 2014.

Maurice Rodgerson, Chair
Michael Campbell, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, made by Paula MacKinnon against Order LD14-046 dated February 18, 2014 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On March 11, 2014 the Commission received a Notice of Appeal dated the same date from a lessee, Paula MacKinnon (the “Appellant”), requesting an appeal of Order LD14-046 dated February 18, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on December 30, 2013 a lessor, Debbie Dennis (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement, together with two (2) Form 4’s – Notice of Termination by Lessor of Rental Agreement one dated November 4, 2013 and the other dated December 3, 2013.

The matter was heard by the Director on January 20, 2014 and in Order LD14-046 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon, Monday, February 24, 2014.”**

The matter was heard by the Commission on March 24, 2014. The Appellant was present. The Respondent was present and was represented by legal counsel, Ryan Gallant. Christine Crain testified on behalf of the Respondent.

EVIDENCE

The Appellant filed an extensive written submission (Exhibit E-31). The Appellant reviewed her written submission in her evidence and argument before the Commission.

Mr. Gallant submitted that the Appellant has been in arrears of rent since December 2013. Mr. Gallant submits that the Appellant currently owes the Respondent \$1600.00 representing two months’ rent. Mr. Gallant requests that the Commission uphold the Director’s decision to terminate the rental agreement.

DECISION

The Commission denies this appeal for the reasons that follow.

The pith and substance of the Appellant's argument is that the Director's decision to terminate the rental agreement should be overturned as clause (f) of section 8 of the **Rental of Residential Property Act** (the **Act**) gives the Director and the Commission equitable authority to allow the continuation of a rental agreement, where appropriate circumstances exist, even where there has been a breach of the rental agreement which would, at law, require the termination of the rental agreement. The Appellant is also submitting that the specific facts of her case provide appropriate circumstances for the Director at first instance and the Commission on appeal to exercise such equitable jurisdiction. The Appellant referred the Commission to subsection 70(6) of the *Residential Tenancies Act, 2006* of the Province of Saskatchewan (the Saskatchewan Act). The Appellant also referred the Commission to *Williams v. Elite Property Management Ltd*, 2012 SKQB 215 (*Williams*).

Section 8(f) of the **Act** reads:

8. Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the Director shall investigate the matter and may

...

(f) make such other decision or order as he considers necessary to ensure compliance with, or to remedy a violation of, this Act or the rental agreement. 1988,c.58,s.8; 1990,c.53,s.1; 1998,c.100,s.1.

Emphasis added by the Commission.

Subsection 70(6) of the Saskatchewan Act reads as follows:

70(6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in the circumstances, including all or any of the following:

- (a) an order directing any person found contravening or failing to comply with a tenancy agreement, this Act, the regulations or an order made pursuant to this Act to stop that contravention or failure and to so comply;*
- (b) an order requiring a tenant to pay to the director all or any part of any instalment of rent otherwise payable to the landlord;*
- (c) an order requiring the payment of damages;*
- (d) subject to section 68, an order granting possession of a rental unit;*
- (e) an order determining the disposition of a security deposit and any accrued interest pursuant to section 33.*

Emphasis added by the Commission.

In *Williams*, Justice Danyiuk of the Saskatchewan Court of Queen's Bench noted that the tenant in that case had paid all of her rental arrears prior to a hearing before a hearing officer. The landlord had sought an order of possession based solely on arrears of rent in the amount of \$367.00 and no other grounds were listed. Justice Danyiuk stated in paragraph 23:

[23] The tenant's case is stronger here. The arrears were paid in full and accepted by the landlord before the hearing was held. At the opening of the hearing, the hearing officer was faced with the prospect that an application for possession was being sought based solely on arrears of \$367.00 when those arrears were paid. At that point, the hearing officer erred. He ought to have considered whether he had jurisdiction. He did not do so.

Justice Danyiuk went on to consider the wording set out in subsection 70(6) of the Saskatchewan Act:

[26] The relief specified in (a) through (e) is not exhaustive. Given the language in the preamble of s.70(6), it is clear that the legislature conferred a wide plenary jurisdiction upon hearing officers and intended the specified relief to be illustrative. The key operative words in s.70(6) are "just and equitable in the circumstances".

...

[28] Hearing officers have been given significant discretion to invoke equitable principles and considerations. Armed with such jurisdiction, it is incumbent upon hearing officers both to consider whether to use it and, if so, to use it in a judicial fashion.

...

[29] It appears the hearing officer in this case neither considered that he had equitable jurisdiction nor considered whether the existing circumstances should impel him to use it.

Turning to the present appeal and the **Act** which applies in the Province of Prince Edward Island, the operative words of section 8(f) are "...ensure compliance with, or to remedy a violation of, this Act or the rental agreement". Section 8(f) is concerned with ensuring compliance with, and fashioning a remedy within, the wording of the statute. It does not make any reference to "equitable" or "equity". It does not make any reference to "circumstances". In the Commission's opinion, section 8(f) does not grant equitable jurisdiction. In fact, the Commission cannot find any reference to equity or equitable jurisdiction anywhere in the **Act**.

The Director and the Commission are creatures of statute. Their authority comes from the applicable statute. Unlike the case in the Province of Saskatchewan, in the Province of Prince Edward Island the applicable statute does not grant either the Director or the Commission with equitable jurisdiction.

In the present appeal, the Appellant and Respondent appeared before the Director, specifically one of her rental officers. At the time of the hearing, the Appellant was *prima facie* [at first sight] one month in arrears. All the factual ingredients required to crystalize the legal basis behind the Form 4 Notice of Termination had occurred. The **Act** does not grant the Director, her rental officers or the Commission equitable jurisdiction. The Director and her rental officers lack the equitable “toolkit” that their colleagues in Saskatchewan have.

The Appellant advanced several arguments relating to the Form 4 served by the Respondent. The Appellant believes that the payment of \$800.00 rent on January 9, 2014 and its acceptance by the Respondent quashed the Form 4 filed in early December 2013 because the only reference on the form was to the failure to pay rent due on December 1, 2013.

The Commission must again abide by the wording of the legislation as it exists in Prince Edward Island. The option to have the Notice of Termination invalidated required the rent to be paid in full within ten days. It was not. In fact the Appellant continues to be in arrears on rent. The Commission therefore rejects this argument. The Form 4 before the Commission was signed and date stamped as received by the Office of the Director. It is accepted by the Commission as valid.

The Commission finds that the Director’s rental officer made the only decision he had authority to do; terminate the rental agreement once the Notice of Termination had crystalized. The Commission is likewise bound and accordingly, the appeal is denied.

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. **Possession of the residential premises shall be surrendered to the Respondent (lessor) and the Sheriff is directed to put the Respondent (lessor) in possession of the residential premises at 12:00 noon, Tuesday, April 15, 2014.”**

DATED at Charlottetown, Prince Edward Island, this **2nd** day of **April, 2014**.

BY THE COMMISSION:

(Sgd. Maurice Rodgerson)
Maurice Rodgerson, Chair

(Sgd. Michael Campbell)
Michael Campbell, Commissioner

(Sgd. Jean Tingley)
Jean Tingley, 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)