



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18036
Order LR18-31**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Josina Frizzell against
Order LD18-288 dated September 10, 2018
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Thursday, the 11th day of October, 2018.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act filed by Josina Frizzell against Order LD18-288 dated September 10, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On September 13, 2018 the Commission received a Notice of Appeal from Josina Frizzell (the “Appellant”), requesting an appeal of Order LD18-288 dated September 10, 2018 issued by the Director of Residential Rental Property (the “Director”) requiring her to surrender the residential premises that she was occupying.

By way of background, on August 29, 2018 Josh Cormier (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking an order that possession of the residential premises be surrendered to the Respondent for non-payment of rent and directing the Sheriff to put the Respondent in possession. Attached to the Form 2 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated July 23, 2018.

The matter was heard by the Director on September 5, 2018 and in Order LD18-288 the Director determined that rent had been unpaid and ordered:

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 by 2:00 p.m. on Thursday, September 13, 2018.”*

The Commission heard the appeal on September 25, 2018. The Appellant was present. The Respondent participated by speakerphone.

EVIDENCE

Appellant’s Evidence

The Appellant testified that she and the Respondent purchased a residential property located at 120 South Drive (“the house”) in 2015. The Appellant provided the Respondent with funds for the down payment and for closing expenses for the purchase of the house. She did not quantify these payments in her testimony before the Commission.

At that time the Appellant and Respondent were a couple and they lived in the house with their child. The Appellant and Respondent later separated. The Appellant wanted to stay in the house and did not want to sell it. The Appellant and the Respondent entered into what she described as a “rent to own” arrangement whereby she provided the Respondent with reimbursement for the mortgage payments. The Appellant was to pay utilities and other expenses for the house directly.

The Appellant filed several additional documents shortly before the commencement of the hearing. An Agreement of Purchase and Sale for the house was signed by the Appellant and Respondent but listed the Purchasers as Josh Cormier and a third party later identified in testimony as the Respondent’s grandfather (Exhibit E-13). A mortgage approval document for the property listed Joshua Cormier and the same third party as “Borrowers” (Exhibit E-14). The Appellant also filed copies of account details (E-15), Interac e-Transfer statements (E-16) and Interac accepted statements (E-17) in an effort to establish her reimbursement of mortgage payments paid on the house to the Respondent. The Appellant filed a series of text messages (E-18) in which the parties discussed keeping or selling the house.

The Appellant’s summarized her position by indicating that she was not paying rent but was paying the mortgage and bills for the house.

Respondent’s Evidence

The Respondent testified that he and the Appellant bought the house in 2015 as a couple. The Respondent stated that he and the Appellant separated in November 2016. His position is that they then entered into what the Respondent characterized as a verbal rent to own agreement whereby the Appellant would pay the Respondent the mortgage payments on the house, as the mortgage was in the Respondent’s name. The Appellant would also pay the heating oil bills and utilities.

The Respondent testified that, for a time, the Appellant provided him with e-transfers for the mortgage. These payments then stopped. The Respondent referred to Exhibit E-6 and noted that utilities were shut off for non-payment.

The Respondent acknowledged that the Appellant had paid between \$7000.00 and \$8,000.00 to him in 2015 for the down payment on the house.

The Respondent submitted that the rent to own agreement was not honoured when the mortgage payments from the Appellant to himself stopped. The Respondent stated that while the Appellant believes she has a right to the house she has not gone to court to pursue that right.

The Respondent summarized his position by alleging that the Appellant does not have an ownership interest in the house but was occupying the house and, therefore, she owes him rent and he is entitled to have possession of the house surrendered to him.

DECISION

The appeal is allowed for the reasons that follow.

Sections 1.(g) and 1.(h) of the ***Rental of Residential Property Act***, R.S.P.E.I. 1988, Cap.R-13.1 (the “**Act**”) set out the definitions of “lessee” and “lessor”:

(g) "lessee" means a person to whom permission is given, pursuant to a rental agreement, to occupy residential premises and includes his assigns and legal representatives;

(h) "lessor" means the owner or other person permitting the occupation, pursuant to a rental agreement, of residential premises and includes his heirs, assigns, personal representatives and successors in title;

Emphasis added.

Section 1.(o) of the **Act** sets out the definition of "rental agreement":

1.(o) "rental agreement" or "agreement" means an agreement, whether written or oral, express or implied, whereby a lessor confers upon a lessee the right to occupy residential premises;

Subsection 5.(1) of the **Act** reads as follows:

5. (1) The relationship of lessor and lessee is one of contract and a rental agreement does not confer on a lessee an interest in land.

While the Director considered the matter to be within her jurisdiction and ordered possession of the house to be surrendered to the Respondent, the Director did not have the benefit of hearing the testimony of the Respondent (as the Respondent did not take part in the hearing before the Director and was represented by an agent) or the benefit of reviewing the additional documents filed as exhibits at the hearing before the Commission.

The evidence before the Commission is that the parties were an unmarried cohabitating couple who for a brief period of time occupied the house together with their child.

The Agreement of Purchase and Sale for the house (Exhibit E-13) was signed by both parties but the names of the purchasers were stated as the Respondent [typed] and his grandfather [name printed by hand]. The oral evidence of both parties confirm that the Appellant provided the Respondent with funds for the down payment on the purchase of the house. Although she was uncertain of the amount, the Appellant's evidence suggested she paid the full down payment plus other costs. The Respondent estimated the figure paid by the Appellant as between \$7000 and \$8000.

The Respondent relies on an Assignment document dated October 30, 2015 (Exhibit E-9), which purports to assign the Appellant's rights to the house to the Respondent. The Appellant characterized this document as being "false". The Commission makes no finding as to the veracity of this document, but notes it is another example of evidence filed that persuades the Commission that this is not a rental matter, but rather a dispute over real property rights and the ownership of the house.

The text messages contained in Exhibit E-18 further confirms that the parties considered the matter to be a real property dispute, frequently referencing the word "we", rather than as a landlord and tenant matter. For example:

Why don't we keep it, but rent it to someone. Then give it to [name redacted for privacy] when its paid off. We can both make a little money each month off someone else renting it.

...

No!! Seriously, we will sit down and talk about with [name redacted for privacy] too. There's so much need for affordable apartments in Summerside. We could easily get \$800 a month if we do a Reno. And you keep the majority of the house.

While both parties referred in their testimony to an oral rent-to-own agreement, their characterization of their arrangement as rent-to-own does not, on its own, make their arrangement a rental agreement as defined in the **Act**.

The testimony and documentary evidence before the Commission are indicative of a property dispute. The crux of the matter is the ownership of the house, and specifically, the Appellant's right, if any, to the real property (or proceeds therefrom). These matters fall outside of the Commission's jurisdiction under the **Act**, but fall within the jurisdiction of the Supreme Court of Prince Edward Island.

The Commission's jurisdiction to hear an appeal under the **Act** is premised on the existence of a rental agreement as defined in 1.(o) and further elaborated on in subsection 5.(1). The definitions of "lessee" in 1.(g) and "lessor" in 1.(h) are also germane to the Commission's jurisdiction. A "lessor" is defined as "the owner or other person permitting the occupation..." The Commission finds that this is not a lessor-lessee relationship within the meaning of the **Act**.

Therefore, the Commission allows the appeal and hereby quashes the decision of the Director in Order LD18-288.

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 allowed and Director's Order LD18-288 is hereby quashed.**

DATED at Charlottetown, Prince Edward Island, this **11th** day of **October**, **2018**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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)