



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19003
Order LR19-01**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Kyla MacMillan against Order LD18-392 dated December 28, 2018 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Tuesday, the 29th day of January, 2019.

John Broderick, Commissioner
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 filed under Section 25 of the Rental of Residential Property Act by Kyla MacMillan against Order LD18-392 dated December 28, 2018 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On January 17, 2019 the Commission received a Notice of Appeal from a lessee, Kyla MacMillan (the “Appellant”), requesting an appeal of Order LD18-392 dated December 28, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, the Appellant and Hal Curley (“Mr. Curley”) and Kim Curley (“Mrs. Curley”), collectively the “Respondents”, entered into a verbal month to month rental agreement on October 1, 2018.

On December 19, 2018, the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination. Attached to the Form 6 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated December 12, 2018 signed by Mr. Curley on behalf of the Respondents.

The Respondents sought to terminate the rental agreement with the Appellant pursuant to a December 12, 2018 Form 4 - Notice of Termination by Lessor of Rental Agreement. On this Form 4, the Respondents have checked reason “(g)” which specifies:

(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(l)(e) of Act);

The matter was heard by the Director on December 21, 2018 and in Order LD18-392 the Director referred to the documents filed and summarized the testimony of the parties. The Director did not make any findings and stated and ordered the following:

“During the hearing, the lessors and the lessee reached an agreement to settle this matter. The lessors and the lessee have agreed that the lessee and all occupants will vacate the premises on or before February 28, 2019 at 12:00 midnight

The Officer notes that the lessee is responsible for the payment of rent up until the day she vacates the premises.”

“IT IS THEREFORE ORDERED THAT

1. *The lessee's application to set aside the Notice of Termination is not necessary.*
2. *The rental agreement between the lessors and the lessee (and all occupants) for the residential premises is terminated as of February 28, 2019 at 12:00 midnight.*
3. *The lessee and all occupants shall vacate on or before February 28, 2019 at 12:00 midnight."*

The Commission heard the appeal on January 23, 2019. The Appellant was present and testified at the hearing. Faren Reeves ("Mr. Reeves") was present and testified on behalf of the Appellant. The Respondents were also present and testified.

EVIDENCE

The Appellant testified that Mr. Reeves is a friend who is a frequent visitor to her apartment. The Appellant testified that she has a physical condition and Mr. Reeves assists her with certain day to day tasks such as getting in and out of the car. The Appellant testified that Mr. Reeves has his own apartment and does not reside at her apartment.

The Appellant also relies on a handwritten note dated December 1, 2018 (Exhibit E-3), which sets out particulars of Mr. Reeves' apartment, to support her position that Mr. Reeves does not reside at her apartment but instead is only a frequent visitor to her apartment.

Mr. Reeves testified that he moved to Summerside on December 1, 2018 and has his own apartment. He is a friend of the Appellant and frequently visits her at her apartment. He occasionally stays overnight. He also spends time at his own apartment playing video games with his godson. Mr. Reeves testified that he did not tell Mr. Curley that he had moved into the Appellant's apartment. Instead, he had approached Mr. Curley telling him that he could do drywall work and other help. Mr. Reeves told Mr. Curley that he could be found at the Appellant's apartment as he is there every day.

Mr. Curley testified that Mr. Reeves had informed him on December 11, 2018 that he had moved into the Appellant's apartment. Mr. Curley testified that he did not want Mr. Reeves living there and he served the Form 4 on the Appellant on December 12, 2018.

Mrs. Curley testified that Mr. Reeves is at the Appellant's apartment all the time.

The Respondents both acknowledged that they have no issue with the Appellant. Their issue is with Mr. Reeves.

The Respondents both acknowledged that Mr. Reeves has not done anything to cause a disturbance at their building.

The parties agree that Mr. Reeves is frequently present at the Appellant's apartment. However they disagree as to whether he is a frequent visitor (the Appellant's position) or has actually moved into the apartment (the Respondents' position).

DECISION

The appeal is allowed as the Commission finds that there has not been any serious impairment to the safety or lawful right or interest of the Respondents by any act or omission of the Appellant or Mr. Reeves.

Section 14(1)(e) of the *Rental of Residential Property Act* (“the **Act**”) reads:

14. (1) The lessor may also serve a notice of termination upon the lessee where

...

(e) the safety or other lawful right or interest of the lessor or other lessee in the residential property has been seriously impaired by an act or omission of the lessee or a person permitted in or on the residential property or residential premises by him;

The Respondents contend that Mr. Reeves resides at the Appellant’s apartment without their consent. The Appellant contends that Mr. Reeves is a visitor to her apartment, albeit a frequent one and references Exhibit E-3, which sets out the particulars of Mr. Reeves’ own apartment, in support of her position. Either position leads the Commission to find that the Appellant has permitted Mr. Reeves to be in her apartment.

The Appellant has a statutory right of appeal under Section 25 of the **Act**.

In appeals filed under the **Act**, the Commission frequently must deal with conflicting evidence. Where a lessor seeks to terminate a rental agreement, the onus is on the lessor to establish, on the civil standard of the balance of probabilities, that the rental agreement should be terminated.

Section 14(1)(e) provides the Director or, under appeal, the Commission with the authority to terminate a rental agreement when sufficient evidence exists to establish that an act or omission seriously impairs the safety or other lawful rights or interests of the lessor or other lessees. The actual conduct of the lessee or “person permitted”, during the term of the rental agreement, is relevant. There would need to be evidence of misconduct committed during the term of the rental agreement by the lessee or the lessee’s “person permitted” to trigger the application of section 14(1)(e) of the **Act**.

The evidence before the Commission fails to establish that there has been any act or omission by either the Appellant or Mr. Reeves causing a serious impairment of the safety or other lawful right or interest of the Respondents or of other tenants in the apartment building. The record does not reveal any complaints from the Respondents or other tenants in the building about the behaviour of the Appellant or Mr. Reeves on the residential premises. In fact, the Respondents confirmed that there have been no such complaints about the behaviour of the Appellant or Mr. Reeves.

While the Respondents may be uncomfortable with Mr. Reeves presence on the residential premises, such discomfort by itself is not sufficient to terminate the rental agreement between the Respondents and the Appellant.

Accordingly, the Commission reverses Director’s Order LD18-392 and finds that the Appellant’s Form 6 – Application by Lessee to Set Aside Notice of Termination is allowed and the rental agreement shall continue to be in full force and effect.

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 LD18-392 is hereby reversed.
2. The rental agreement shall continue to be in full force and effect.

DATED at Charlottetown, Prince Edward Island, this **29th** day of **January**, **2019**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, 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)