



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19012
Order LR19-09**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Dominique Des Lauriers
against Order LD19-078 dated March 6, 2019
issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 12th day of April, 2019.

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 filed under Section 25 of the Rental of Residential Property Act by Dominique Des Lauriers against Order LD19-078 dated March 6, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On March 12, 2019 the Commission received a Notice of Appeal from Bruce Allen of Diversified Property & Management Services (“Mr. Allen”), the representative of a lessor, Dominique Des Lauriers (the “Appellant”), requesting an appeal of Order LD19-078 dated March 6, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 17, 2019, two lessees, Volodymyr Zagorodniy and Olga Zagorodnya (the “Respondents”) 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 January 15, 2019 signed by Mr. Allen on behalf of the Appellant.

The matter was heard by the Director on March 1, 2019 and in Order 19-078 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination by Lessor of Rental Agreement (Form 6) is allowed and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on April 5, 2019. Mr. Allen participated and testified for the Appellant. The Appellant participated and testified by telephone. The Respondents participated and testified. Raymundo Yu (“Mr. Yu”) assisted the Respondents and also testified.

EVIDENCE

Mr. Allen stated that the Appellant had provided the Respondents with 75 days notice rather than the minimum 60 days notice that is required. He stated that while the renovation provision was checked off on the January 15, 2019 Form 4 Notice of Termination by Lessor of Rental Agreement, an appendix A was not filed because the Appellant does not yet know how much renovation work she will be doing. Mr. Allen stated that the renovation reason was checked off by mistake. Mr. Allen stated that the Appellant wishes to move into 35 Corrigan Court for her permanent residence.

The Appellant testified that she is moving back to Prince Edward Island in April 2019 and she has nowhere else to live. She testified that the other side of the building, 33 Corrigan Court, is already rented out as three rooms and she wishes to reside in 35 Corrigan Court. She intends to stay at 35 Corrigan Court as her primary residence and continue to rent 33 Corrigan Court.

The Appellant also testified to some matters she raised in attachments to a February 27, 2019 email to the Director's staff (Exhibit E-5, pages 7 to 15 of the appeal record). She stated that she and Mr. Allen had asked the Director to take this information "off the table".

Mr. Yu testified that the Respondents were good to the community, good neighbours and a good family. At the hearing, Mr. Yu submitted Exhibit E-15 which contains a letter from himself as well as a letter from each of the Respondents.

The Respondents testified that they moved into 35 Corrigan Court in February 2015 when the building was owned by a previous owner. They testified that they always paid their rent on time. They also addressed some of the matters raised by the Appellant in Exhibit E-5.

DECISION

The appeal is denied and Director's Order LD19-078 is confirmed.

The Appellant served the Respondents with a Form 4 Notice of Termination by Lessor of Rental Agreement dated January 15, 2019. That Form 4 checked off two reasons for seeking the termination of the rental agreement; the first reason pertaining to the Appellant seeking possession of the premises for occupation by herself pursuant to section 15.(1)(a) of the **Rental of Residential Property Act** (the "**Act**") and the second reason pertaining to the Appellant seeking to renovate the premises pursuant to section 15.(1)(c) of the **Act**. These two sections of the **Act** read as follows:

15. Personal use, renovations, etc.

(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;

...

(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;

...

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

As the nature of the renovations were never provided to the Respondent, the reason for termination pertaining to section 15.(1)(c) is not valid. It appears to be the position of the Appellant that the section 15.(1)(c) provision was checked off in error and the Appellant wishes to proceed solely on the section 15.(1)(a) provision, namely that she seeks possession of 35 Corrigan Court for her own occupation.

“Good faith” is at the heart of a section 15.(1)(a) application for possession of the premises for the occupation by the lessor.

The Ontario case of *TSL-89512-17 (Re)*, 2018 CanLII 42635 (ON LTB) provides a helpful summary of the interpretation of ‘good faith’ in the context of a lessor seeking to obtain possession for occupation by the lessor or a close member of the lessor’s family. While the Ontario legislation is not identical to the **Act**, it is similar. In *TSL-89512-17*, Roderick Flynn, member of the Landlord and Tenant Board, stated:

Analysis

27. *Section 48(1) [a provision similar to section 15.(1)(a) of the Act] requires that, in order to be successful in this application, the Landlord must satisfy me that at the time of the service of the N12 Notice, he had a good faith intention to move into the unit.*

28. *The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (Feeney v. Noble (1994), 19, O.R. (3d) (Div. Ct.). However, the relevant precedents also affirm that I may draw inferences about the Landlord’s good faith from the Landlord’s conduct and motives (Fava v. Harrison 2014 ONSC 3352 (ONSC DC) (CanLII)).*

29. *In this case, having considered the totality of the evidence, I am not persuaded, on a balance of probabilities of the Landlord’s good faith intention to reside in the unit.*

...

32. *In my view, what I am left with, on the totality of the evidence, is ambiguity about the Landlord’s good faith in serving the N12 Notice; leading me to infer, as I am permitted to do; that the N12 Notice was served for a reason other than a good faith intention to occupy the unit.*

33. *As I am not satisfied that the Landlord served the N12 Notice in good faith, the requirement under s.48(1) of the Act has not been satisfied and this application must fail.*

[Explanation added by the Commission.]

In Order LR93-9 the Commission heard an appeal of a decision of the Director pertaining to the service of a Form 4 Notice of Termination by Lessor of Rental Agreement pertaining to section 15.(1)(a) of the **Act**. In Order LR93-9 the Commission wrote:

The evidence at the hearing clearly showed a serious breakdown in relations between the Lessor and Lessee, with much bitterness present on both sides. Much time was devoted to complaints by each about the other. Such evidence would be relevant if an argument was seriously being made that the Notice of Termination was not made in good faith. However, the evidence in this case is quite strong as to the desire of the Lessor to have the premises for himself and the desire of the Lessor and his future wife to have the premises to themselves.

In the present appeal, Exhibit E-3 (found on page 5 of the appeal record) provides evidence in the form of an undated letter of recommendation suggesting a very positive past landlord and tenant relationship between the parties. However, there is much evidence on the record, both in documents filed and in oral testimony, as to recent past difficulties between the parties. The evidence suggests that the relationship between the parties became strained in 2018 and remains so today.

While these difficulties may provide an alternate motive for terminating the tenancy, Order LD93-9 demonstrates that such motive may also co-exist with a lessor seeking, in good faith, possession of the premises in order to personally occupy the premises.

At the hearing before the Commission there was minimal detail in the Appellant's oral evidence as to the circumstances as to why she wished to obtain possession of 35 Corrigan Court. By contrast, in Order LR93-9, "*...the evidence in this case is quite strong as to the desire of the Lessor to have the premises for himself and the desire of the Lessor and his future wife to have the premises to themselves.*"

The Commission must decide whether, on the civil standard of the balance of probabilities, the Appellant, at the time she served the Form 4, had a good faith intention to personally occupy 35 Corrigan Court. *Feeney v. Noble*, which was referenced earlier, equates a good faith intention to occupy the premises with a genuine intention to occupy the premises.

Based on the oral testimony before the Commission on April 5, 2019, it is certainly possible that the Appellant has the present intention of moving in to 35 Corrigan Court. However, for the purposes of this appeal, the Appellant's present intention is not relevant. What is relevant is the Appellant's genuine intention when the January 15, 2019 Form 4 was served on the Respondents.

Section 26.(1) of the **Act** reads:

26. Procedure

(1) An appeal to the Commission shall be by way of a re-hearing, and the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit and make such decision or order as the Director is authorized to make under this Act.

The Appellant's written statement (a portion of Exhibit E-5 filed in response to the Respondents' Form 6) found on pages 8 through 10 of the appeal record identifies her concerns as to why she did not wish to return to her residence at 33 Corrigan Court, immediately next door to 35 Corrigan Court. This statement also provides considerable detail about the dispute between the Appellant and one of the Respondents, specifically Mr. Zagorodniy.

Director's Order LD19-078 forms part of the record before the Commission. Neither party took specific issue with the summary of testimony contained in the Director's Order.

The last paragraph of page 3 of Order LD19-078 contains a summary of the Appellant's testimony before the Director whereby the Appellant explained why she did not wish to move into 33 Corrigan Court next door to 35 Corrigan Court. The Director's Rental Property Officer offers the following analysis at the bottom of page 4 and continuing on the top of page 5 of the Director's Order:

Further, the requirement that the Notice of Termination (Form 4) dated January 15, 2019 be given “in good faith” means that if challenged, the lessor must show that the reason the notice was served was for renovations or for the lessor’s occupation of the premises and not for any other reason. The lessor admitted that the reason the Notice of Termination (Form 4) dated January 15, 2019 was served on the lessees was due to the dispute between the lessor and Mr. Zagorodniy over the oil drum. The lessor did not want to live next to Mr. Zagorodniy and for this reason served the lessees with the Notice of Termination (Form 4). Based on the evidence presented, the Officer finds that the lessor did not serve the Notice of Termination (Form 4) dated January 15, 2019 in good faith.

The Commission finds that the record reveals a breakdown in the landlord tenant relationship. The record before the Commission reveals the Appellant’s intentions at the time the January 15, 2019 Form 4 was served on the Respondents. Applying the civil standard of the balance of probabilities, the Commission finds that the evidence is sufficient to support a finding that the January 15, 2019 Form 4 was not served in good faith.

Accordingly, the appeal is denied and Director’s Order LR19-078 is confirmed.

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. Director’s Order LD19-078 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **12th day of April, 2019**.

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)