



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19023
Order LR19-16**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act by Volodymyr Zahorodniy and
Olga Zahorodnya against Order LD19-186
dated May 13, 2019 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Monday, the 3rd day of June, 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 under Section 25 of the Rental of Residential Property Act by Volodymyr Zahorodniy and Olga Zahorodnya against Order LD19-186 dated May 13, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On May 17, 2019 the Commission received a Notice of Appeal signed by a lessee, Volodymyr Zahorodniy (“Mr. Zahorodniy”) on behalf of himself and Olga Zahorodnya (“Ms. Zagorodnya”) (together the “Appellants”) requesting an appeal of Order LD19-186 dated May 13, 2019 issued by the Director of Residential Rental Property (the Director).

By way of background, on April 24, 2019 the Appellants 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 April 23, 2019 signed by Dominique Des Lauriers (the “Respondent”).

The matter was heard by the Director on May 8, 2019 and in Order LD19-186 the Director ordered:

IT IS THEREFORE ORDERED THAT

- 1. The lessees’ Application by Lessee to Set Aside Notice of Termination (Form 6) dated April 24, 2019 is dismissed.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated April 23, 2019 to be effective June 23, 2019 is valid; however, the Officer varies the effective date to 11:59 p.m. on June 30 2019.*
- 3. The rental agreement between the parties shall terminate as of June 30, 2019 and the lessees shall vacate the premises by 11:59 p.m. on that date.*
- 4. If the lessees fail to vacate the premises in accordance with Paragraph 3 of this Order, then the lessor shall be entitled to apply without further notice to the lessees for an Order directing the Sheriff to put the lessor in possession of the premises.*
- 5. All other terms and conditions of the rental agreement, including the payment of rent, shall remain in effect.*
- 6. The Officer reserves the right to inspect the premises with notice to the lessor to ensure that the lessor in fact resides in the unit.”*

The Commission heard the appeal on May 30, 2019. Mr. Zahorodniy and Raymundo Yu (“Mr. Yu”) represented the Appellants along with Ms. Zagorodnya. The Respondent was also present.

EVIDENCE

Mr. Yu read a letter from Mr. Zagorodniy into the record, describing economic hardship and a lack of available and affordable housing.

Mr. Zagorodniy described his efforts to seek new housing for himself and his family.

The Respondent read a letter forming part of Exhibit E-16 into the record. She explained that she moved back to the Province in April 2019 and has been living in a motel room while waiting to move into her home. She explained that she has a genuine intention and commitment to occupy the premises.

DECISION

The appeal is denied and Director's Order LD19-186 is confirmed.

As the Respondent had made comments at the hearing on the appeal process, the Commission notes that the right to appeal under the ***Rental of Residential Property Act*** (the "***Act***") is authorized under section 25. Section 26 of the ***Act*** then sets out the procedure for such an appeal before the Commission:

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 Commission wishes to emphasize that an appeal under the ***Act*** shall be a re-hearing of the matter and thus the ***Act*** requires the Commission to follow a different procedure than what the law generally requires for an appeal to the Courts.

While the evidence reveals that the Appellants are facing hardships and affordable housing may be difficult to locate, the ***Act*** allows a lessor to obtain possession of the premises for her own occupation provided that the lessor seeks possession in good faith and serves the lessee with a notice of termination to be effective not less than two months after said notice is served.

In the present appeal, the Commission finds that the Respondent provided sufficient notice and has sought possession of the premises in good faith. Accordingly, the Commission confirms Director's Order LD19-186.

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 LD19-186 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **3rd** day of **June, 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.