



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR19041 and
LR19042
Order LR19-25**

IN THE MATTER of appeals filed under
Section 25 of the Rental of Residential
Property Act by Cheryl Chandler against
Order LD19-314 dated July 23, 2019 and Order
LD19-324 dated July 30, 2019 issued by the
Office of the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Tuesday, the 20th day of August, 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 appeals filed under Section 25 of the Rental of Residential Property Act by Cheryl Chandler against Order LD19-314 dated July 23, 2019 and Order LD19-324 dated July 30, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND (ORDER LD19-314)

On August 1, 2019 the Commission received a Notice of Appeal from a lessee, Cheryl Chandler (the “Appellant”), requesting an appeal of Order LD19-314 dated July 23, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on June 17, 2019 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 June 13, 2019 signed by a lessor, Barbara MacLean (the “Respondent”).

The matter was heard by the Director on July 18, 2019 and in Order LD19-314 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination (Form 6) is dismissed.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated June 13, 2019 for effect August 13, 2019 is valid.*
- 3. The rental agreement between the parties shall terminate as of August 13, 2019 and the lessee shall vacate the rental premises by 11:59 p.m. on that date.*
- 4. If the lessee fails to vacate the premises in accordance with Paragraph 3 of this Order, then the Sheriff is directed to put the lessor in possession of the premises by **12:00 noon on Wednesday, August 14, 2019.***
- 5. All other conditions of the rental agreement, including the payment of rent, shall remain in force until the termination of the rental agreement.”*

BACKGROUND (ORDER LD19-324)

On August 1, 2019 the Commission received a Notice of Appeal from a lessee, Cheryl Chandler (the “Appellant”), requesting an appeal of Order LD19-324 dated July 30, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on June 17, 2019 the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement believing that Statutory Condition 6.2 regarding the provision of services and Section 6.9 relating to quiet enjoyment has been contravened and requesting a return of rent. On June 19, 2019 the Director forwarded the Form 2 to the lessor, Barbara MacLean (the “Respondent”).

The matter was heard by the Director on July 18, 2019 and in Order LD19-324 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application is dismissed.”*

The Commission heard both appeals on August 19, 2019. The Appellant was present along with her witness and representative Corinne Hardy-Adams (“Ms. Hardy-Adams”). The Respondent was present along with her witness Michael MacLean (“Mr. MacLean”) and her legal counsel Will Cann (“Mr. Cann”).

EVIDENCE

The Appellant testified that she appealed the termination of the rental agreement primarily because every time she exercised her rights as a tenant the closing date for the sale of the premises was delayed. She submitted that the changing closing dates seems to be just another tactic and she questions the reasoning behind this. She feels that the sale of the property is not a real sale and stated that was her “honest opinion”.

The Appellant testified that she filed an appeal on the return of rent matter because she and the Respondent had entered into a verbal agreement for \$800.00 per month, heat and lights included. She testified that she paid \$800.00 per month rent for the months of November and December 2017 and the months of January, February and March 2018. She testified that in January 2018 the Respondent decided to no longer include heat and she, the Appellant, had to take over the cost of furnace oil for heating the premises. As of April 2018 the rent payment was \$650.00 (see Exhibit E-12, Docket LR19042, page 43).

The Appellant testified that she did not know about the water concerns until the testing was done. The Appellant testified that she asked for a written lease agreement but never received one.

Mr. Cann explained that the purchaser of the premises wants vacant possession and as such the closing date for the property transaction must be extended while this matter was awaiting resolution before the Director and now, on appeal, before the Commission. The Respondent testified that the very first extension to the closing date was caused by financial considerations.

Mr. MacLean testified that he and the Respondent were present with the Appellant when the parties had come to a verbal agreement. Mr. MacLean and the Respondent testified that the Appellant moved into the premises in November 2017. For the first three months, the rent was to be \$800.00 per month, including heat, electricity and snow removal. This three month period was to give the Appellant the time to put the electricity and oil in her own name. In February 2018 the Respondent stopped paying for the furnace oil. The Appellant did not put the electricity bill in her own name. In April 2018 the Respondent lowered the rent to \$650.00 as the Appellant was paying the oil bill.

The Respondent testified that from the beginning the Appellant had been advised that the house was being put up for sale.

Mr. Cann submitted that the Respondent complied diligently with Provincial requirements pertaining to water issue and thus there is no indication of lessor negligence. He noted that the Appellant was promptly advised when follow up testing revealed the water was safe to drink. Mr. Cann also submitted that the Appellant waited over a year before making her return of rent application after the Respondent sought to terminate the rental agreement.

DECISION

Appeal of ORDER LD19-314 Termination of Rental Agreement

The appeal is dismissed and Director's Order LD19-314 is confirmed with a new date of possession of Wednesday August 21, 2019 at 12:00 noon. That is to say, the Sheriff is directed to put the Respondent lessor in possession of the premises by 12:00 noon on Wednesday, August 21, 2019.

In making its determination on this matter, the Commission agrees with and adopts the findings of the Director.

Subsection 15.(1.1) of the *Rental of Residential Property Act* ("the **Act**") is germane to this issue before the Commission and reads:

Notice of termination where purchaser seeks vacant possession

15. (1.1) Where

(a) the lessor is the owner of residential premises comprising not more than two rental units;

(b) the lessor enters into an agreement of sale of the residential premises to a purchaser; and

(c) the purchaser has sworn an affidavit that he wishes to have possession of the premises for occupation by himself, his spouse, children or parents or the parents of his spouse,

the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served and the notice shall be accompanied by a copy of the affidavit referred to in clause (c).

The onus is on the Respondent to establish that she has complied with the requirements of subsection 15.(1.1) of the **Act**.

In the present appeal the residential premises consist of a single family house. The Respondent lessor is the owner of said house. The Respondent has in fact entered into an agreement of purchase and sale with a purchaser – this document has been provided to the Director, the Appellant and the Commission. The purchaser has sworn an affidavit seeking personal possession – again, this document has been provided to the Director, the Appellant and the Commission. A Form 4 Notice of Termination by Lessor of Rental Agreement, dated June 13, 2019 and referencing subsection 15.(1.1) of the **Act** was served on the Appellant.

The Commission finds that all the requirements of subsection 15.(1.1) of the **Act** have been met. Thus the Respondent has satisfied the onus placed upon her and the Appellant's appeal on this matter is dismissed.

Appeal of ORDER LD19-324 Return of Rent

The appeal is dismissed and Director's Order LD19-324 is confirmed.

In making its determination on this matter, the Commission agrees with and adopts the findings of the Director.

There was no written agreement between the parties governing the terms of the residential rental tenancy. Both parties agree that there was a verbal agreement. The parties do not agree on the key terms of that agreement. The Appellant says they agreed to rent of \$800.00 per month with heat and electricity included. The Respondent says that they agreed to \$800.00 per month for the first three months with heat, electricity and snow removal included for those first three months to allow the Appellant the time to transfer these services into her own name, after which the rent would be \$650.00 per month.

The onus is on the party asserting the claim – in this case the Appellant who has applied for a return of some of the rent money she has previously paid. In effect, the Appellant is arguing that, after a few month of rent including heat and electricity, the Respondent unilaterally altered the terms of the rental agreement.

On or about the beginning of April 2018 the receipts filed with the Commission demonstrate that the monthly rent changed from \$800.00 per month to \$650.00 per month and shortly before this time the heating oil receipts filed with the Commission demonstrate that the Appellant began paying directly for her heating oil. If this change in the situation was contrary to the verbal agreement between the parties and thus amounted to a one-sided alteration of the verbal agreement by the Respondent, it would have been logical for there to have been a strenuous objection made by the Appellant. There is no written evidence of such objection from the Appellant in 2018. The Appellant has not provided a letter or email from this time period challenging or objecting to this state of affairs. Nor did she file an application for return of rent or discontinuation of services with the Director in the weeks that followed this change. Rather, the Appellant filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement on June 17, 2019, some four days after she was served with a Form 4 advising her of a termination of the rental agreement.

Based on the evidence provided, the Commission finds that the Appellant has not satisfied the onus on the civil standard of the balance of probabilities and accordingly, this matter is also dismissed.

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 of Director's Order LD19-314 is dismissed and said Director's Order is confirmed, subject to a variance in the termination date to the date of possession to Wednesday August 21, 2019 at 12:00 noon.
2. The Sheriff is directed to put the Respondent lessor in possession of the residential premises at 9292 Commercial Road, Murray River by 12:00 noon on Wednesday, August 21, 2019
3. The appeal of Director's Order LD19-324 is dismissed and said Director's Order is confirmed.

DATED at Charlottetown, Prince Edward Island, this 20th day of August, 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.