



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19045
Order LR19-27**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by David Doucette and Angela
Knox against Order LD19-329 dated July 31,
2019 issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 28th 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 an appeal filed under Section 25 of the Rental of Residential Property Act by David Doucette and Angela Knox against Order LD19-329 dated July 31, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On August 8, 2019 the Commission received a Notice of Appeal from two occupants of a residential premises, David Doucette (“Mr. Doucette”) and Angela Knox (“Ms. Knox”) (together the “Appellants”), requesting an appeal of Order LD19-329 dated July 31, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 19, 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 July 2, 2019 signed by a lessor, McInnis Group (1993) Ltd. (the “Respondent”).

The matter was heard by the Director on July 26, 2019 and in Order LD19-329 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The occupants’ Application by Lessee to Set Aside Notice of Termination (Form 6) dated July 19, 2019 is dismissed.*
- 2. The lessor’s Notice of Termination by Lessor of Rental Agreement (Form 4) dated July 2, 2019 to be effective August 3, 2019 is valid. However, the Officer varies the effective date to 11:59 p.m. on August 11, 2019.*
- 3. The occupants shall vacate the premises by 11:59 p.m. on August 11, 2019.*
- 4. If the occupants fail 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 August 12, 2019.**”*

The Commission heard the appeal on August 21, 2019. The Appellants were present. The Respondent was represented by Kathy McInnis (“Ms. McInnis”) and Bill McInnis (“Mr. McInnis”).

EVIDENCE

The Appellants testified that they moved into the premises to care for Ms. Knox's mother. They testified that Ms. Knox moved in in late April 2018 and Mr. Doucette moved in in late June 2018 when they gave up their own apartment. The Appellants testified that the building superintendent was aware that they were living in the premises. Ms. Knox testified that the Respondent's secretary was also aware she was living there.

The Appellants testified that Ms. Knox's mother passed away in May 2019. A few days later the Respondent sent them a letter of condolence but requested that they leave the premises at the end of May 2019. The Appellants testified that the Respondents later agreed to allow them to stay until the end of June 2019.

The Appellants testified that they tried to pay the rent in July 2019 but the Respondent's secretary told them to keep their money.

Ms. McInnis testified that she did not know that the Appellants had moved into the premises. Ms. McInnis explained that she does the renting. She agreed that the Appellants could stay until the end of June 2019 and that rent was paid from Ms. Knox's mother's account. Ms. McInnis stated that she has no intention of continuing to rent the premises to the Appellants, and they must vacate the premises. However they could apply for an apartment and if their application was successful be added to the waiting list. Ms. McInnis further explained that the Respondent has a considerable waiting list of people seeking apartments.

DECISION

The appeal is denied.

During the hearing, it was apparent that much confusion and distress was caused by the fact that item "(g)" on the July 2, 2019 Form 4 was selected. This was the correct clause to check off, however it covers several rather different kinds of circumstances. The Form 4 is prescribed by Regulation and thus neither the Commission nor the Director has the power to revise this form to put these differing circumstances into separate clauses. There is a section on the Form 4 in which particulars can be entered and had the Respondent filled in that section to better explain the reason for termination much misunderstanding may have been avoided.

The Appellants were not named on the rental agreement. While some of the Respondent's staff may have been aware that they were living in the premises and acquiesced to this, Ms. McInnis, who is responsible for the renting of the units was not aware they had moved in. Thus, the Commission cannot find that the Respondent gave permission or even acquiesced to the Appellants moving in and thus this cannot constitute an agreement, explicit or tacit, to add the Appellants to the lease.

As the Appellants were not named in the rental agreement and were not added to the rental agreement by consent or acquiescence of the Respondent, there is no rental agreement between the Appellants and the Respondent.

Further, section 16 of the *Rental of Residential Property Act* (the "**Act**") reads:

16. Application to set aside notice

(1) A lessee who has received notice of termination for any of the reasons set out in section 13 or 14 may apply to the Director for an order setting aside the notice.

Application to set aside notice - section 15

(1.1) A lessee who has received notice of termination for any of the reasons set out in section 15 may apply to the Director for an order setting aside the notice.

Idem

(2) An application under subsection (1) shall be made by a lessee not later than ten days after being served with the notice.

Time for application

(2.1) An application under subsection (1.1) shall be made by a lessee not later than twenty days after being served with the notice.

Idem

(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.

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(4) The lessee shall serve the lessor with a copy of an application of the lessee under subsection (1) or (1.1). 1988,c.58,s.16; 1990,c.53,s.6; 2019,c.16,s.1.

Emphasis added.

While the Appellants did file a Form 6 application to set aside a termination made under section 14 of the **Act**, this form was filed beyond the ten day period for doing so and thus they are deemed to have accepted the terms of the July 2, 2019 Form 4.

For the above reasons the Commission must uphold Director's Order LD19-329.

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 LD19-329 is upheld.**

DATED at Charlottetown, Prince Edward Island, this **28th day of August, 2019.**

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Jean Tingly)

Jean Tingly, 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.