



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR19043
Order LR19-28**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Khalid Shatoor (aka Shateer)
and Fawzeyah Albakheet against Order LD19-
319 dated July 26, 2019 issued by the Office
of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 10th day of September, 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 Khalid Shatoor (aka Shateer) and Fawzeyah Albakheet against Order LD19-319 dated July 26, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On August 2, 2019 the Commission received a Notice of Appeal from two lessees, Khalid Shatoor (aka Khalid Shateer) and Fawzeyah Albakheet (“the Appellants”), requesting an appeal of Order LD19-319 dated July 26, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 11, 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 5, 2019 signed by Carolyn Ramsay (“Ms. Ramsay”) on behalf of a lessor, CAPREIT Limited Partnership (the “Respondent”).

The matter was heard by the Director on July 19, 2019 and in Order LD19-319 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees’ Application by Lessee to Set Aside the Notice of Termination (Form 6) dated July 11, 2019 is dismissed.*
- 2. The lessor’s Notice of Termination by Lessor of Rental Agreement (Form 4) dated July 5, 2019 to be effective August 5, 2019 is valid.*
- 3. The rental agreement between the parties shall terminate at 11:59 p.m. on August 5, 2019 and the lessees shall vacate the rental 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 Sheriff is directed to put the lessor in possession of the premises by **12:00 noon on August 6, 2019.***
- 5. All other terms and conditions of the rental agreement, including the payment of rent, shall remain in force until the termination of the rental agreement.”*

The Commission heard the appeal on August 27, 2019. The Appellants were present and were represented by legal counsel, Chera-Lee Gomez and co-counsel Duncan Sturz. Lina Daas served as interpreter. Brad Murray (“Mr. Murray”), Alia Hack (“Ms. Hack”) and Raeda Alhasan (“Ms. Alhasan”) testified for the Appellants. The Respondent was represented by Ms. Ramsay. Amanda Rogers (“Ms. Rogers”) testified for the Respondent.

EVIDENCE

Evidence and submissions for the Appellants

Counsel for the Appellants submitted that there are two cultures and two world views interacting and thus the cultural context is critical. Counsel submitted that there are two versions of the event and the credibility of each party must be considered. Counsel submitted that the event complained of by the Respondent did not happen, but in the alternative, if the Commission finds that it did happen the event is not sufficient to justify the termination of the rental agreement.

Counsel for the Appellants filed a written argument (August 27, 2019 letter from Counsel to the Commission) and referenced the points of that argument orally at the hearing.

Counsel for the Appellants read the Affidavit of the Appellants (“Exhibit E-14”) into the record.

Ms. Alhasan testified as to customary Syrian greetings and interactions between people, including between men and women.

Mr. Murray works for the Prince Edward Island Newcomers Association (“PEINA”) as a refugee assistance coordinator. He provided background testimony with respect to refugees and Syrian refugees in particular.

Ms. Hack works for PEINA as a Canadian life skills worker. She had represented the Appellants in the hearing before the Director.

Evidence and submissions for the Respondent

Ms. Ramsey submitted that this matter is not a matter of a cultural misunderstanding. She described the events of concern, noted that the Director had terminated the rental agreement and submitted that the Director’s order should be upheld.

Ms. Rogers testified as to the events of concern.

DECISION

The appeal is allowed and Director’s Order LD19-319 is reversed.

Counsel for the Appellants suggest that the cultural context is a key factor and this matter ultimately revolves around which version of events is accurate and thus the matter turns on the credibility of the parties.

The Commission finds that both Ms. Rogers and the Appellants honestly related the circumstances as they remember them.

On a balance of probabilities, the Commission finds that the actual circumstances of the incident were as described by Ms. Rogers.

The evidence before the Commission indicates that the apartment door in question was accidentally left unlocked when a guest left the apartment on the morning in question. There is absolutely no evidence to suggest that forced entry occurred.

The Commission finds that while culture may have some minor background relevance it is not germane to the determination of this appeal as earlier interactions between the parties prior to the incident were not viewed as problematic.

The Commission finds that paragraph 17 of Exhibit E-14 is helpful in the consideration of this appeal. This paragraph describes the age and health of the Appellant Khalid Shatoor (“Mr. Shatoor”). The Commission finds, on the balance of probabilities, that Mr. Shatoor, an elderly man with numerous health issues, accidentally entered the wrong apartment through the unlocked door.

Due to his age and health it is plausible that Mr. Shatoor may have been confused and thought he was in his own apartment until he opened the second door. The evidence indicates that he peeked in to the room, was surprised and walked away. This evidence lends support to the possibility that he was confused and felt he was in his own apartment. He may not remember the incident and thus it is not described in the affidavit.

The Commission finds that one tenant accidentally entering the apartment of another tenant through an unlocked apartment main door is concerning but can occasionally happen. There has been no reoccurrence of the incident.

The Commission finds that the threshold to evict the Appellants has not been met in the present matter and thus the appeal is allowed and Director’s Order LD19-319 reversed.

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 LD19-319 is reversed.**
- 2. The rental agreement between the parties remains in effect.**

DATED at Charlottetown, Prince Edward Island, this **10th day of September, 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.