



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19048
Order LR19-30**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Catherine Anderson against Order LD19-317 dated July 26, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 13th day of September, 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 (the "Act") by Catherine Anderson against Order LD19-317 dated July 26, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On August 12, 2019 the Commission received a Notice of Appeal from a lessee, Catherine Anderson (the "Appellant"), requesting an appeal of Order LD19-317 dated July 26, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on July 3, 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 30, 2019 signed by two representatives of a lessor, Red Dirt Properties Inc. (the "Respondent").

The matter was heard by the Director on July 15, 2019 and in Order LD19-317 the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessee's Application by Lessee to Set Aside Notice of Termination (Form 6) dated July 3, 2019 is dismissed.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated June 20, 2019 for effect August 31, 2019, is valid.*
- 3. The rental agreement between the parties shall terminate as of August 31, 2019 and the lessee shall vacate the 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, the lessor shall be entitled to apply without further notice to the lessee for an Order directing the Sheriff to put the lessor in possession of the premises.*
- 5. The lessor's representatives shall advise the Officer or Director of Residential Rental Property in writing when the renovations are completed and the Officer or Director will inspect the premises with Notice to the lessor to ensure the work outlined in the Appendix "A" is in fact completed.*
- 6. All other terms and conditions of the rental agreement, including the payment of rent, shall remain in effect."*

The Commission heard the appeal on September 6, 2019. The Appellant was present. The Respondent was represented by Lucas Welsh (“Mr. Welsh”) and Ryan Trowsdale (“Mr. Trowsdale”).

EVIDENCE

The Appellant testified that she does not feel that the renovation work would require her to vacate the premises. She filed documentation from the City of Charlottetown to the effect that her apartment only needs the installation of an egress window. She testified that her apartment had been renovated a few years ago and referenced pictures to demonstrate that it is not in need of renovation.

Mr. Welsh and Mr. Trowsdale testified that the units above the Appellant’s apartment require the installation of fire rated drywall on both sides. This means that a new ceiling would need to be installed throughout the Appellant’s apartment.

The Appellant countered that fire rated drywall could be placed over the existing ceiling without the need to demolish said ceiling.

Mr. Welsh and Mr. Trowsdale responded that they recently acquired the building and want to renovate this building the “right way”. They testified that by opening up the ceiling hidden defects may very well be found that should be addressed. As well, doing things the “right way” would allow them to upgrade the insulation in the building.

DECISION

The appeal is denied and Director’s Order LD19-317 is confirmed.

The evidence of both parties, taken together, establishes that the City of Charlottetown requires, for safety reasons, an upgrade of an egress window in the Appellant’s apartment for fire safety as well as the installation of fire rated drywall on the Appellant’s ceiling for the benefit of the apartments above her apartment. This is the minimum required.

While meeting the minimal code requirements would not likely require the termination of the rental agreement, section 15.(1)(c) of the **Act** is not limited to authorizing the termination of a rental agreement only to meet municipal code requirements or the requirements of the National Building Code. Rather, the **Act** leaves the nature of the renovations to the lessor. The lessor is required to act in good faith and provide at least two months’ notice.

The Commission is satisfied that the Respondent is acting in good faith and has given the required notice.

Director’s Order LD19-317 provides that the Director reserves the right to inspect the premises after the conclusion of the work to ensure that the renovations are conducted as stated in the lessor’s application.

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 LD19-317 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **13th day of September, 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.