



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19052
Order LR19-31**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act ("the "Act") by Teresa and Dale
Cook against Order LD19-386 dated August
26, 2019 issued by 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 under Section 25 of the Rental of Residential Property Act ("the "Act") by Teresa and Dale Cook against Order LD19-386 dated August 26, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 28, 2019 the Commission received a Notice of Appeal signed by a lessor, Teresa Cook ("Ms. Cook") on behalf of herself and Dale Cook ("Mr. Cook") (collectively the "Appellants") requesting an appeal of Order LD19-386 dated August 26, 2019 issued by the Director of Residential Rental Property (the Director).

By way of background, on August 12, 2019 two lessees, Barbara Power ("Ms. Power") and Andrew Pollock ("Mr. Pollock") (together the "Respondents") 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 August 7, 2019 signed by Mr. Cook.

The matter was heard by the Director on August 21, 2019 and in Order LD19-386 the Director ordered:

IT IS THEREFORE ORDERED THAT

1. *The lessees' Application by Lessee to Set Aside Notice of Termination (Form 6) is allowed and the rental agreement shall continue to be in full force and effect"*

The Commission heard the appeal on September 5, 2019. The Appellants were present at the hearing. The Respondents were also present at the hearing.

EVIDENCE

Ms. Cook testified that the Respondents had received expressions of concern from other tenants about the behaviour of the Respondents. Ms. Cook stated that she feels intimidated by the Respondents. She expressed concern about the Respondents parking in such a manner as to take up two parking spaces with one vehicle. She expressed concern about noise and foul language. She noted that one tenant couple has left and a second tenant couple may leave.

The Respondents testified that they have lived in their apartment for a year and a half but the problems only began recently after the Appellants informed them that they had to remove a wooden cat structure from their balcony. Mr. Pollock testified that he used a hammer to take apart the structure as he did not have other tools. The Respondents explained that they parked straddling the parking lot line to provide more room for a person with mobility needs and to avoid door damage to their vehicle.

Both parties submitted pictures and videos in an effort to establish the points they tried to make.

DECISION

The appeal is denied and Director's Order LD19-386 is confirmed.

The Appellants seek to terminate the rental agreement on the basis of sections 14.(1)(a) ("clause (a)") and 14.(1)(e) ("clause e") of the **Act**.

Clause (a) concerns the breach of statutory condition 3 or 4 or any other term of the rental agreement other than failure to pay rent. In the present matter, the Appellants allege a breach of statutory condition 3:

3. *Good Behaviour*

The lessee and any person admitted to the premises by the lessee shall conduct themselves in such a manner as not to interfere with the possession, occupancy or quiet enjoyment of other lessees.

Clause (e) reads:

14.(1)(e) the safety or other lawful right or interest of the lessor or other lessee in the residential property has been seriously impaired by an act or omission of the lessee or a person permitted in or on the residential property or residential premises by him;

Emphasis added.

With respect to clause (a) the available evidence suggests conduct that gets close to establishing a breach of quiet enjoyment but ultimately fails. Had the complaining tenants testified before the Commission the evidence may have been sufficiently compelling to establish a breach of statutory condition 3.

With respect to clause (e) the safety or other lawful right or interest of the lessor or other lessee must be "seriously impaired". The evidence before the Commission does not demonstrate such serious impairment.

The video evidence submitted by the Appellants with respect to the demolition of the cat structure actually undermines the impact of the written statements made by the complaining tenants with respect to the demolition incident.

The evidence does, however, ably demonstrate a generational clash between the Respondents on the one hand and the Appellants and the other tenants on the other hand. It would be advisable for the Respondents to adjust their behaviour to be more respectful and considerate of their fellow tenants and be civil to their lessors.

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 LD19-386 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.