



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19064
Order LR19-39**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act (the "Act") filed by Weiwei (Alice)
Yu against Order LD19-471 dated October 25,
2019 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION

on Thursday, the 14th
day of November, 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 (the "Act") filed by Weiwei (Alice) Yu against Order LD19-471 dated October 25, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On October 28, 2019 the Commission received a Notice of Appeal from a lessor, Weiwei (Alice) Yu (the "Appellant"), requesting an appeal of Order LD19-471 dated October 25, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on October 7, 2019 a lessee, Courtney Picard (the "Respondent"), filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated September 20, 2019 (the "Notice of Termination") signed by the Appellant. The reason cited on the Notice of Termination was that:

"A purchaser wants possession of the premises for occupation by himself and his family: (s.15(1.1) of the Act)."

The matter was heard by the Director on October 23, 2019 and in Order LD19-471 the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessee's Application by Lessee to Set Aside Notice of Termination (Form 6) dated October 7, 2019 is allowed and the rental agreement shall continue to be in full force and effect."*

The Commission heard the appeal on November 7, 2019. The Appellant was present, along with her legal counsel Geoff Gibson ("Mr. Gibson"). Zuquan Huang ("Mr. Huang") and Limin Wei ("Mr. Wei") testified for the Appellant. The Respondent was also present.

EVIDENCE

Mr. Wei spoke to his November 4, 2019 signed statement (Exhibit E-10). He also spoke to his September 23, 2019 affidavit (Exhibit E-2). He explained that he and his wife are purchasing the two unit duplex located at 35-39 Rankin Court Charlottetown. They would live in one unit while their 20 year old son would live in the other unit of the duplex. They and their son currently live in an apartment.

Mr. Huang is a real estate agent involved in the pending sale of 35-39 Rankin Court. He testified that the closing date has been extended to provide sufficient notice to the Respondent. He testified that he served the Respondent with the Form 4 Notice on September 20, 2019 and then served her with the Affidavit on September 23, 2019. He did not realize at the time that the Notice and the Affidavit had to be served together. He stated that the bank required vacant possession in order to approve the mortgage.

The Respondent questioned why Mr. Wei, his wife and son could not share the single already vacant three bedroom unit, given that they were currently sharing an apartment.

In his submissions, Mr. Gibson acknowledged that the serving of the Form 4 Notice on September 20, 2019 and the supporting Affidavit three days later did not follow the requirements set out in subsection 15.(1.1) of the **Act**. However, he submitted that there was no real prejudice to this technical breach and submitted that the appropriate remedy would be to extend the termination date by an additional three days.

DECISION

The Commission denies the appeal and confirms Director's Order LD19-471.

Subsection 15.(1.1) of the **Act** reads:

Notice of termination where purchaser seeks vacant possession

(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).

Emphasis added.

The testimony of Mr. Wei before the Commission supports his affidavit. The testimony of Mr. Huang supports the agreement of purchase and sale.

However, the Form 4 Notice was not accompanied by the required supporting affidavit.

While the serving of the affidavit three days after the service of the Form 4 Notice may be viewed by some as a mere technical breach, this must be examined within the context of subsection 15.(1.1). Subsection 15.(1.1) serves to terminate a rental agreement with a minimum of two months notice, not for any fault or wrongdoing of a lessee, but rather to provide a purchaser with vacant possession.

Effectively the rights of a lessee are diminished by the right of a third party to obtain vacant possession upon purchase of the residential premises from the lessor. In these circumstances it is only reasonable to give full weight to the words "...the notice shall be accompanied by a copy of the affidavit referred to in clause (c)."

Accordingly, the Commission finds that the Notice requirements set out in subsection 15.(1.1) of the Act have not been met and accordingly, the Commission confirms the outcome of Director's Order LD19-471.

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 LD19-471 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **14th** day of **November, 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.