



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19063
Order LR19-40**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") filed by Freeman Crawford against Order LD19-464 dated October 22, 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 Freeman Crawford against Order LD19-464 dated October 22, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On October 23, 2019 the Commission received a Notice of Appeal from a lessee, Freeman Crawford (the "Appellant"), requesting an appeal of Order LD19-464 dated October 22, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on October 7, 2019 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached the following:

1. a Form 4 – Notice of Termination by Lessor of Rental Agreement dated September 26, 2019 (the "First Notice of Termination") signed by Weiguang Yang (Mr. Yang) on behalf of a lessor, Shine Enterprises Inc. (the "Respondent") for non-payment of rent in the amount of \$750.00 due on September 23, 2019; and
2. a Form 4 – Notice of Termination by Lessor of Rental Agreement dated September 26, 2019 (the "Second Notice of Termination") signed by Mr. Yang on behalf of the Respondent. The reasons for serving the Second Notice of Termination were that:
 - (a) You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees (s.14(1)(a) of the Act); and
 - (b) An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property (s.14(1)(e) of Act).

The matter was heard by the Director on October 16, 2019 and in Order LD19-464 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. *The lessee's Application to Set Aside the Notices of Termination (Form 6) dated October 7, 2019 is dismissed.*

2. *The lessor's Notices of Termination (Form 4) both dated September 26, 2019 are valid and the rental agreement will terminate at 2:00 p.m. on October 25, 2019.*
3. *The lessee and all occupants shall vacate the premises by 2:00 p.m. on October 25, 2019.*
4. *If the lessee fails 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 4:00 pm on October 25, 2019."*

The Commission heard the appeal on November 7, 2019. The Appellant was present. Shawn Decourcey ("Mr. Decourcey") testified on behalf of the Appellant. The Respondent was represented by Mr. Yang.

EVIDENCE

The Appellant testified that his tenancy commenced May 23, 2019. He testified that he had informed Mr. Yang that he would need to make payment every two weeks. The Appellant testified that he did not remember signing the rental agreement (Exhibit E-5).

The Appellant acknowledged that he owed some money for rent and he wanted to straighten that out with Mr. Yang. He stated that he offered money to Mr. Yang but Mr. Yang would not accept the money.

The Appellant testified that his friends, including Mr. Decourcey, often visited him and also looked after his residential unit when he was away.

Mr. Decourcey testified that he and his girlfriend often visited the Appellant and also kept an eye on his residential unit while he was away. Mr. Decourcey testified as to the various incidents raised by Mr. Yang.

Mr. Yang stated at the hearing that the Appellant presently owes \$1,050.00 in rent. Mr. Yang served the Appellant with both the First Notice of Termination and the Second Notice of Termination on September 26, 2019.

Mr. Yang testified that the Shine Motel contains 41 units. Of these 41 units, 32 are long term monthly units while 9 units are rented on a nightly basis.

Mr. Yang testified that the Appellant is not quiet, that people come to his unit whether he is at home or not, that these people come during the day, the night, even 5:00 a.m. Mr. Yang offered photographs and videos in an effort to support his position. He testified that he had received complaints from nightly guests at the motel.

DECISION

The appeal is denied and the termination of the rental agreement, as ordered by the Director in Order LD19-464, is confirmed.

The Respondent served the Second Notice of Termination on the Appellant seeking to terminate the rental agreement pursuant to subsection 14.(1)(a) and (e) of the **Act**.

14. Grounds for termination

(1) *The lessor may also serve a notice of termination upon the lessee where*

(a) *statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;*

...

(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;*

Statutory condition 3. reads:

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.

When considering the matter of “good behaviour” the perspective of other lessees is vital. In reviewing the evidence, the Commission notes that there were no documented complaints filed by other lessees and no testimony from other lessees complaining about the Appellant or his friends. While Mr. Yang referred to complaints from nightly motel guests there were no written complaints filed with the Commission. The Commission finds that the evidence presented by the Respondent with respect to “good behaviour” is not sufficient to support a finding of interference in the possession, occupancy or quiet enjoyment of other lessees.

The evidence before the Commission of the behaviour of the Appellant and his friends falls short of a serious impairment of the safety or other lawful right or interest of the lessor or another lessee.

Based on the evidence and testimony heard by the Commission, the Commission finds that the behavioural concerns raised by Mr. Yang, while bothersome to Mr. Yang, and perhaps also bothersome to the Respondent’s staff and nightly motel guests, are not sufficient, of themselves, to terminate the rental agreement.

The Respondent served the First Notice of Termination on the Appellant seeking to terminate the rental agreement on the basis of a failure to pay rent. Subsections 13(1) and (2) of the **Act** read:

13. Failure to pay rent

(1) *Where a lessee fails to pay rent in accordance with the rental agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.*

Payment of rent after notice

(2) A lessee may, within ten days of being served with a notice of termination under subsection (1) deliver to the lessor all the rent due as of that date, whereupon the notice shall be void.

Emphasis added.

The First Notice of Termination states that the Appellant failed to pay his rent in the amount of \$750.00 which was due on September 23, 2019. This document was served on the Appellant on September 26, 2019. As noted on the First Notice of Termination and pursuant to section 13 of the **Act**, the Appellant had the right to invalidate this document by paying all rent due as of that date within ten days of receiving the First Notice of Termination.

The Commission finds that the arrears was not paid in full within the ten day time period and therefore, pursuant to section 13. of the **Act**, the rental agreement is terminated.

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 LD19-464 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.