



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19070
Order LR19-45**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Erica Fisher and Steven Praught against Orders LD19-499 and LD19-500 dated November 21, 2019 and issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 11th day of December, 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 Erica Fisher and Steven Praught against Orders LD19-499 and LD19-500 dated November 21, 2019 and issued by the Office of the Director of Residential Rental Property.

Order

On November 22, 2019 the Commission received a Notice of Appeal from a lessee, Erica Fisher ("Ms. Fisher") on behalf of herself and another lessee, Steven Praught ("Mr. Praught") (collectively the "Appellants"), requesting an appeal of Orders LD19-499 and LD19-500 dated November 21, 2019 issued by the Director of Residential Rental Property (the "Director").

ORDER LD19-499

By way of background:

On November 8, 2019 the Appellants filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached:

- a. a Form 4 – Notice of Termination by Lessor of Rental Agreement dated November 3, 2019 for non-payment of rent and signed by a lessor, Jason Hickey (the "Respondent"); and
- b. a Form 4 - Notice of Termination by Lessor of Rental Agreement dated November 5, 2019 for issues related to safety and lawful right of the lessor signed by the Respondent.

The matter was heard by the Director on November 19, 2019 and in Order LD19-499 dated November 21, 2019 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. *The lessee's Application to Set Aside the Notices of Termination by Lessor of Rental Agreement (Form 6) is dismissed.*
2. *The Notices of Termination by Lessor of Rental Agreement (Form 4s) dated November 3, 2019 for effective November 23, 2019 for rent owing; and November 5, 2019 for effect December 5, 2019 for safety and lawful right are both valid."*

ORDER LD19-500

By way of background on November 5, 2019 the Respondent filed with the Director a Form 5 – Application by Lessor for Earlier Termination to which was attached:

- a. a Form 4 – Notice of Termination by Lessor of Rental Agreement dated November 3, 2019 for non-payment of rent and signed by a the Respondent ; and
- b. a Form 4 - Notice of Termination by Lessor of Rental Agreement dated November 5, 2019 for issues related to safety and lawful right of the lessor and signed by the Respondent.

The matter was heard by the Director on November 19, 2019 and in Order LD19-500 dated November 21, 2019 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessor’s Application for Earlier Termination is allowed.*
2. *The rental agreement between the parties shall terminate on November 25, 2019 and the lessee and all occupants shall vacate the premises by 12:00 noon on that date.*
3. *If the lessee and all occupants fail to vacate the premises in accordance with Paragraph 2 of this Order, then the Sheriff is directed to put the lessor in possession of the premises by **4:00 pm on November 25, 2019.***
4. *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 December 11, 2019. The Appellant Ms. Fisher participated by way of telephone conference call. The Respondent was present in the hearing room along with Krista Hickey (“Ms. Hickey”).

Given the existence of Form 11.1 undertakings, the Commission ensured that the parties were physically separate during the hearing and required that the parties put their questions to the panel chair rather than to each other.

EVIDENCE

Ms. Fisher testified that she did not believe that there was any arrears of rent. She stated that there was a verbal agreement between the parties to disregard what was not paid if work was done on the property and a missing pump was replaced. She acknowledged that she never replaced the pump as she thought it went missing while previous tenants were there. Ms. Fisher testified that December rent has been sent.

Ms. Fisher testified that she was not sure as to what damage the Appellants did to the property. With respect to the “in and out traffic” she noted the Appellants did have a young friend living with them. She stated that she didn’t think the eviction notice was very fair.

The Respondent testified that he had a verbal agreement whereby he agreed to waive extra rent money for the times the Appellants had extra people living in the unit. He stated they also had an agreement that the Appellants would pay for a missing phone and a missing pump.

Ms. Hickey and the Respondent reviewed the rental arrears, determining that there was an arrears of \$260.00 as of November 9, 2019. They noted that a partial payment of rent for the month of December was received, with current arrears of \$317.00.

The Respondent and Ms. Hickey presented evidence as to damage to property and other matters noted on the November 5, 2019 Form 5 Application by Lessor for Earlier Termination and the November 5, 2019 Form 4 Notice of Termination by Lessor of Rental agreement pertaining to a breach of section 14(1)(e) of the **Act**.

DECISION

The Commission denies the appeal and confirms Director's Orders LD19-499 and LD19-500.

Order LD19-499

The evidence satisfies the Commission that the Appellants have been in arrears of rent since November 1, 2019 and that they remain in arrears of rent.

While there appears to have been a verbal agreement to waive rent, this agreement was premised on the Appellants performing improvements on the property and replacing the pump. While the evidence is in dispute as to whether such improvements were made, the Appellant Ms. Fisher acknowledges that the Appellants did not replace the pump. Further, it appears the verbal agreement actually related to additional rent for other adult occupants and the Respondent is not including such rent in the calculation of the arrears.

Section 14.(1)(e) of the **Act** reads:

14. Grounds for termination

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

...

(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;

The Commission finds that the Respondent has established, on the civil standard of a balance of probabilities, that the safety or other lawful right or interest of the Respondent has been seriously impaired by an act or omission of the Appellants or persons permitted in or on the residential unit.

Ms. Fisher admitted to one of these acts in her testimony and in a text message contained in Exhibit E-8.

Order LD19-500

The evidence, including the existence of Form 11.1 undertakings, satisfies the Commission that the early termination ordered by the Director was warranted. The Commission is satisfied that section 14.(1)(e) of the **Act** was breached in a manner that justifies terminating the rental agreement as early as possible.

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 Orders LD19-499 and LD19-500 are confirmed.

DATED at Charlottetown, Prince Edward Island, this **11th** day of **December, 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.