



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19071
Order LR20-02**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by John Trainor and William Almon against Order LD19-494 dated November 19, 2019 issued by the Office of the Director of Residential Rental Property .

BEFORE THE COMMISSION

on Wednesday, the 22nd day of January, 2020.

M. Douglas Clow, Vice-Chair
Erin T. Mitchell, 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") by John Trainor and William Almon against Order LD19-494 dated November 19, 2019 issued by the Office of the Director of Residential Rental Property .

Order

BACKGROUND

On December 6, 2019 the Commission received a Notice of Appeal from a lessor, John Trainor ("Mr. Trainor") on behalf of himself and another lessor, William Almon ("Mr. Almon") (collectively the "Appellants"), requesting an appeal of Order LD19-494 dated November 19, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on October 30, 2019 two lessees, Susan Corrigan ("Ms. Corrigan") and Hallie MacLeod ("Mr. MacLeod") (collectively 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 October 29, 2019 signed by Mr. Trainor. The reason that the Notice of Termination by Lessor was served was that:

"I want to renovate the premises in the manner described on Appendix "A" attached hereto, and the renovations cannot be carried out while you are occupying the premises (s. 15(1)(c)) of the Act.

The particulars of termination stated:

"Appendix A: Renovate kitchen, replace cabinets, counter top and flooring. Also, replace other flooring in the hallway and bedroom. New paint for the ceilings and walls, change bedroom and closet doors."

The matter was heard by the Director on November 19, 2019 and in Order LD19-494 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. *The lessees' application to set aside the Notice of Termination by Lessor of Rental Agreement (Form 6) is allowed and the rental agreement shall continue to be in full force and effect."*

The Commission heard the appeal on January 14, 2020. The Appellants were present and represented themselves. The Respondents were present and represented themselves.

EVIDENCE

Mr. Trainor testified that he and Mr. Almon have owned the four unit apartment building for approximately 17 years. During this time period they have renovated the other three units. This unit, apartment #2, is the last unit to be fully renovated. Some renovations to apartment #2 have already been done. He testified that the living room floor is uneven and needs either a concrete over-floor or a wooden sub-floor to raise the floor by four or five inches. He stated that the heating system for the living room will likely need to be moved as a result of raising the floor. The Appellants also intend to replace the rest of the doors, renovate the kitchen and replace the rest of the flooring. The wall behind the lower kitchen cupboard will be repaired. They also intend to paint the entire apartment and replace light fixtures.

Mr. Trainor testified that though he and Mr. Almon both work full time, they would be doing most of the work themselves. As of the date of the hearing, no other tradespeople had been hired. Mr. Trainor estimated the renovations could take from three weeks to several months to complete. The Appellants submitted as Exhibit E-11 a "Cash Estimate" from Kent Building Supplies dated January 8, 2020, listing the materials anticipated to be required to complete the planned renovation, which totalled \$9,938.89. Due to time management, dust, and possible damage to contents, the Appellants request that the Respondents vacate the apartment.

The Respondents testified that some renovations, including a complete renovation of the bathroom, have already been completed without the need for them to vacate the apartment. The Respondents wish to stay in their apartment and are prepared to live through these renovations.

The Respondents testified that on October 22, 2019 they received a Form 1 Notice of Increase in Rent of Residential Premises dated October 16, 2019 seeking to increase the rent by a stated \$12.00 per month resulting in a stated total rental rate of \$600.00 per month (Exhibit E-3) The percentage rental increase was not specified. The same day the Respondents received the Form 1 they texted Mr. Trainor, pointing out that the maximum allowable rent increase was 1.3% which would result in a rental increase to \$585.50 not \$600.00. The Respondents then testified that on October 29, 2019 they received a Form 4 Notice of Termination by Lessor of Rental Agreement, seeking to terminate the rental agreement effective December 31, 2019 to carry out renovations.

The Commission panel inquired of Mr. Trainor as to what had changed between the service of the Notice of Increase in Rent on October 22, 2019 and the service of the Notice of Termination on October 29, 2019. Mr. Trainor responded:

"Susan Corrigan told me she wasn't comfortable paying me that rental increase and I decided at that point, you know, this is a good opportunity for me to renovate the property, the unit, and I said I did have someone approach me about buying the property and that's the last unit in there that has to be renovated so again our investment and we're just looking to trying to improve the value of it ..."

Mr. Trainor later clarified that he did not receive the inquiry regarding a possible purchaser between October 22 and October 29, 2019. The Respondents noted that another unit within the building was recently advertised for \$950 per month (see Exhibit E-10).

In response to further questioning from the Commission panel inquiring as to whether he would be proceeding with the renovations if the Respondents had agreed to the rental increase, Mr. Trainor stated “I probably would have said you could stay another year.”

DECISION

The Commission denies the appeal and confirms Director’s Order LD19-494.

Section 15.(1)(c) of the Act reads:

15. Personal use, renovations, etc.

(1) Where the lessor in good faith seeks to

...

(c) renovate the premises where the nature of the renovations are advised to the lessee and are such that the renovations cannot be carried out while the lessee occupies the premises;

...

the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.

Emphasis added.

In the evidence before the Commission, it is apparent that the Respondents were able to continue to live in their apartment while other renovations, including a complete ‘gutting’ of the bathroom (as evidenced by photographs provided by the Respondents), were done.

While the proposed renovations would be inconvenient to the Respondents, the Commission finds that such renovations could be carried out while the Respondents continue to occupy the apartment. In making this finding, the Commission agrees with the findings of the Director in Order LD19-494.

In Director’s Order LD19-494 it is noted that the rent for the Respondent’s apartment is \$578.00 per month.

In Order LR19-33 dated September 17, 2019, the Commission set the allowable percentage rent increase for the period January 1, 2020 to December 31, 2020 at 1.3 percent.

The evidence before the Commission reveals that the Appellants initially sought an increase in rent. The Respondents received the Form 1 increase in rent notice on October 22, 2019 and pointed out flaws in this notice to Mr. Trainor that same day. One week later, the Appellants served the Respondents with a Form 4 seeking a termination of the rental agreement on the basis of proposed renovations.

Section 15.(1)(c) requires a lessor to seek the renovation in good faith. Mr. Trainor acknowledged that the decision to serve the Form 4 seeking termination of the rental agreement was a result of the Respondent’s taking issue with the Form 1 that he originally served. Though the Commission acknowledges and appreciates Mr. Trainor’s candor in his responses to questioning, the facts in this appeal persuade the Commission to find that the Appellants did not act in good faith when they tried to terminate the rental agreement after attempting a flawed and unlawful rental increase.

As the Commission finds that the renovations can be carried out while the Respondents continue to occupy the apartment and the Commission further finds the Appellants did not act in good faith, the appeal is denied.

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 LD19-494 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **22nd day of January, 2020.**

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Erin T. Mitchell)

Erin T. Mitchell, 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.