



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20022
Order LR20-27**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "*Act*") by Janet Sturgess against Order LD20-172 dated July 22, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

the 24th day of September, 2020.

Erin T. Mitchell, Panel Chair & Commissioner
J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair

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 Janet Sturgess against Order LD20-172 dated July 22, 2020 issued by the Office of the Director of Residential Rental Property.

Order

This appeal asks the Commission to determine whether an eviction notice was valid, based on a claim of non-payment of rent and improper behaviour on the part of an occupant of a trailer park lot.

Background

On April 27, 2020, the Appellant, Janet Sturgess ("Sturgess") purchased assets from the Lower Montague Trailer Park Co-operative Ltd. (the "Co-operative"), being the trailer park land (the "Property"). She states she also purchased accounts receivable owing to the Co-operative. At the time of purchase, there were 36 mobile home sites on the Property, 34 of which were occupied. One such site was occupied by the Respondent, Chris MacKinnon ("MacKinnon").

On May 4, 2020 Sturgess served MacKinnon with a notice to terminate their rental agreement due to alleged non-payment of rent and the behaviour of MacKinnon and his guests (the "Form 4"). The termination was to be effective June 4, 2020, and cited the following reasons:

"You have failed to pay your rent in the amount of \$12,500.00, which was due on the 1st day of May, 2020 (s. 13 of Act);

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 Act); and

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you seriously impaired the safety or lawful right or interest of me or other lessees in the residential property (s. 14(1) (e) of Act)."

MacKinnon filed an application to set aside the notice of termination on May 6, 2020 (the "Form 6").

The matter was heard by the Office of the Director of Residential Rental Property (the "Director") on July 22, 2020. In Order LD20-172, (the "Order") the Director allowed MacKinnon's application to set aside the notice of termination, and declared the rental agreement as being in full force and effect. Sturgess appealed.

The appeal was heard by the Commission on September 2, 2020. Sturgess appeared on her own behalf. MacKinnon advised the Commission that though he was aware of the hearing, he did not wish to participate.

Appeals to the Commission under the *Rental of Residential Property Act* are re-hearings, as stated in section 26(2). As such, the Commission considered the evidence that was before the Director, as well as the materials filed and submissions made by Sturgess on appeal.

Disposition

The appeal is denied and Director's Order LD20-172 is confirmed.

The Issues

The Commission will consider the following questions in determining this appeal:

1. Did Sturgess and MacKinnon have a "rental agreement" as defined in the Act?
2. Does MacKinnon owe "rent" to Sturgess? If so, in what amount?
3. Did the behaviour of MacKinnon and his associates warrant eviction?

Did Sturgess and MacKinnon have a "rental agreement"?

The evidence before the Commission establishes that MacKinnon occupied a mobile home lot in a trailer park previously owned by the Co-operative. The Co-operative charged MacKinnon a fee of \$100.00 per month for use of the lot. The evidence establishes that Sturgess purchased the Property on April 27, 2020, but prior to that date, it was owned by and operated as the Co-operative.

The Commission confirms the finding of the Director that the Act does not apply to any agreement in effect during the period of time that preceded Sturgess purchasing the Property on April 27, 2020, for the following reasons.

The Act only applies in circumstances where there exists a rental agreement, i.e., an agreement where a lessor permits a lessee to occupy "residential premises", as stated in section 2 of the Act. "Residential premises" is defined in section 1(p) to exclude any property that is exempted by the regulations.

Subsection 1(i) of the *Rental of Residential Property Act Regulations* (the "Regulations") reads as follows:

EXEMPTED PREMISES

1. Exempted premises

The following premises are exempt from the provisions of the Act:

...

(i) premises which are co-operative housing. (EC10/89; 427/98)

Co-operative housing is defined in section 1(b) of the Act:

1. Definitions

In this Act

...

(b) “co-operative housing” means a housing project that is developed, owned and operated by a company incorporated as a co-operative under the Co-operative Associations Act R.S.P.E.I. 1988, Cap. C-23;

There is no dispute between the parties that, prior to April 27, 2020, the Property was a co-operative housing project. Consequently, to the extent there was a binding agreement between MacKinnon and the Co-operative, this did not constitute a “rental agreement” as defined in the Act. Simply put, prior to April 27, 2020 there was no “rental agreement”.

Following the purchase of the Property, the evidence establishes that there was a rental agreement between Sturgess and MacKinnon. We note that there need not be a formal written agreement in order for a rental agreement to exist (see section 1(o) of the Act). MacKinnon was living on the Property. The evidence establishes that MacKinnon paid to Sturgess \$100 on each of May 1 and June 1, 2020. Sturgess considered these payments to be contributions to what she characterized as “rent arrears”, but MacKinnon stated to the Director that he “started paying rent again in May 2020, after the lessor purchased the park”. Sturgess prepared a Form 4 dated May 3, 2020 and served that document on the Respondent. By preparing and serving this document, Sturgess effectively acknowledged that there was a rental agreement in effect at the time she issued the Form 4.

In Sturgess’ written reasons for appeal, she notes in part:

The Director cannot allow an Application by Lessee to Set Aside (Form 6) if the applicant is not a “lessee”.

Failing a valid Application by Lessee to Set Aside Notice of Termination, then the party is deemed to have accepted the notice of termination, as stated in Sec 16(3).

The Commission notes that where there is no rental agreement there is no lessee, but there is also no lessor. There would thus be no authority for Sturgess to issue a valid Form 4. We find this conclusion to be untenable and does not accurately reflect the relationship between the parties.

Does MacKinnon owe “rent” to Sturgess?

The Director found that the alleged debt of \$12,500.00 that Sturgess claims she acquired by way of purchase and assignment of accounts receivable from the Co-operative when she purchased the property was not “rent” as defined in the Act. The Commission agrees.

The Supreme Court of Prince Edward Island has the sole jurisdiction to adjudicate claims of debts due by virtue of a claimed purchase and assignment of accounts receivable.

A lessor is only permitted to evict a lessee for non-payment of rent when rent is not paid *in accordance with a rental agreement*. As any previous arrangement between the Co-operative and MacKinnon is exempt from the Act, an eviction for failure to pay rent would need to be based on a new rental agreement between Sturgess and MacKinnon.

The evidence before the Commission, and the Director's Order, establish that effective May 1, 2020, the rent for a lot located on the Property is \$200. At the time that Sturgess served the Form 4, MacKinnon had paid \$100. He subsequently paid \$100 on June 1, 2020. The Director noted that MacKinnon considered these payments to be for rent. Sturgess states in her Notice of Appeal that MacKinnon made one further payment, for a total of \$300 (Reasons for Appeal, #4).

Did the behaviour of MacKinnon and his associates warrant eviction?

Sturgess also seeks to evict MacKinnon on the basis of behavior, summarized in her written reasons as "... 9 consecutive days of violating park rules since April 27, 2020, until I filed the Form 4 Notice, ...". Behavioral matters are also set out in Appendix "A" to the Form 4 (page 3 of the documents record, part of Exhibit E-1).

The Director found that the behavioral issues alleged by Sturgess did not reach a level breaching the Act. The Director set aside the Appellant's Form 4 application for termination of the rental agreement.

The Commission confirms the Director's findings that the Respondent's behavior during the brief period that a rental agreement existed prior to the issuance of the Form 4 is insufficient to warrant a termination of the rental agreement. There is no evidence before the Commission that Sturgess gave notice to MacKinnon of what conduct was appropriate or inappropriate within the trailer park. There is also no evidence before the Commission that Sturgess provided any written or oral warnings to MacKinnon regarding his alleged conduct.

The Commission notes the cautions directed to MacKinnon as set out Director's Order LD20-172 and reiterates that failure to abide by these cautions may, in the future, result in MacKinnon and his mobile home being required to vacate the trailer park. The Commission also notes that the Director's Order establishes site rent as \$200.00 per month.

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 LD20-172 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **24th day of September, 2020.**

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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.