



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20024
Order LR20-32**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Order LD20-185 dated July 27, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 16th day of October, 2020.

Erin T. Mitchell, Panel Chair & Commissioner
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 LD20-185 dated July 27, 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.

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, Clyde Quinlan ("Quinlan").

On May 3, 2020 Sturgess served Quinlan with a notice to terminate their rental agreement due to alleged non-payment (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 \$9,600.00, which was due on the 1st day of May, 2020 (s. 13 of Act);"

Quinlan filed an application to set aside the notice of termination on May 11, 2020 (the "Form 6").

The matter was heard by the Office of the Director of Residential Rental Property (the "Director") on July 17, 2020. In Order LD20-185, dated July 27, 2020 (the "Order") the Director allowed Quinlan'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 October 7, 2020. Sturgess appeared on her own behalf. Quinlan appeared on his own behalf.

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 and Quinlan on appeal.

Disposition

The appeal is denied and Director's Order LD20-185 is confirmed.

The Issues

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

1. Did Sturgess and Quinlan have a “rental agreement” as defined in the Act?
2. Does Quinlan owe “rent” to Sturgess? If so, in what amount?

Did Sturgess and Quinlan have a “rental agreement”?

The evidence before the Commission establishes that Quinlan occupied a mobile home lot in a trailer park previously owned by the Co-operative. The Co-operative charged Quinlan 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 reasons set out in detail in Commission Orders LR20-27 and LR20-28.

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 Quinlan 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 Quinlan. 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). Quinlan were living on the Property. The evidence establishes that Quinlan paid to Sturgess \$100 on each of May 1, June 1, and July 1, 2020. Sturgess considered these payments to be contributions to what she characterized as “rent arrears”. Sturgess prepared a Form 4 dated May 3, 2020 and served that document on Quinlan. 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 "Application by Lessee to Set Aside Notice of Termination" was filed by persons not a defined as "lessee" in the Act, therefore the hearing should not have taken place, and as stated in Sec 16(3) of the Act, "Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice".

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.

In Sturgess’ arguments which she presented at the hearing before the Commission (see Exhibit E-13) she notes in part:

Section 9 of the Landlord Tenant Act determined that there was no rental agreement that existed at the time I purchased the property.

Any attempt to show that a lessor-lessee relationship existed outside the Act, to show that an agreement existed "by virtue of this Act or otherwise" cannot be supported by any evidence.

Neither the Director nor the Commission has any jurisdiction to make a determination as to whether the *Landlord and Tenant Act, Cap. L-4* applies to this matter. Sturgess has not provided the Commission with any evidence that the Supreme Court of Prince Edward Island has determined that the *Landlord and Tenant Act* applies prior to Sturgess' purchase of the trailer park.

Sturgess also noted the following in her arguments:

The Commission determined that by serving a squatter with an eviction notice, the Commission deems that the squatter is immediately considered to be a tenant or lessee, and that a rental agreement has been confirmed.

There is no evidence before the Commission that a court with jurisdiction, either at common law or pursuant to the *Trespass to Property Act, Cap. T-6* has determined that Quinlan was a "squatter".

Does Quinlan owe "rent" to Sturgess?

The Director found that the sum of \$9,600.00 (see Form 4) 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 Quinlan 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 Quinlan.

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, Quinlan had paid \$100. He subsequently paid \$100 on June 1 and on July 1, 2020. The Director noted that Quinlan considered these payments to be for rent. The Commission also notes that the Director's Order establishes site rent as \$200.00 per month. While Quinlan was in arrears in the amount of \$100 at the time he was served with the Form 4, he most certainly was not in arrears of rent to the sum of \$9,600.00. The Director determined that the Form 4 is invalid due to this substantial discrepancy. The Commission agrees with this finding. While rent may be owed, it must be accurately quantified in a Form 4 in order to be valid.

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 LD20-185 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **16th day of October, 2020**.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(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.