



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20025
Order LR20-33**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Order LD20-196 dated August 4, 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 LD20-196 dated August 4, 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, Howard MacMaster ("MacMaster").

On June 8, 2020 Sturgess served MacMaster with a notice to terminate their rental agreement due to alleged non-payment (the "Form 4"). The termination was to be effective June 15, 2020, and cited the following reasons:

"You have failed to pay your rent in the amount of \$1,700.00, which was due on the 1st day of May, 2020 (s. 13 of Act);"

MacMaster filed an application to set aside the notice of termination on June 12, 2020 (the "Form 6").

The matter was heard by the Office of the Director of Residential Rental Property (the "Director") on July 29, 2020. In Order LD20-196, dated August 4, 2020 (the "Order") the Director allowed MacMaster'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 8, 2020. Sturgess appeared on her own behalf. MacMaster 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 MacMaster on appeal.

Disposition

The appeal is denied and Director's Order LD20-196 is confirmed.

The Issues

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

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

Did Sturgess and MacMaster have a “rental agreement”?

The evidence before the Commission establishes that MacMaster occupied a mobile home lot in a trailer park previously owned by the Co-operative. The Co-operative charged MacMaster 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 detailed in Commission Order 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 MacMaster 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 MacMaster. 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). MacMaster was living on the Property. Sturgess stated that she prepared a Form 4 and mailed it to MacMaster on May 8, 2020. By preparing and serving this document by mail, Sturgess effectively acknowledged that there was a rental agreement in effect at the time she issued the Form 4. The evidence establishes that MacMaster paid to Sturgess \$1,700.00 on June 10, 2020.

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 presented to the Commission (see Exhibit E-16) Sturgess stated in part:

Although Mr. MacMaster claims a [sic] oral agreement existed between himself and the Co-op, that agreement began 10 years ago. What is valid evidence is that Mr. MacMaster failed to honor the terms of the agreement, and, for the last 17 months, failed to pay any rent to the Co-op. Since the agreement the two parties had was subject to the Landlord Tenant Act, Mr. MacMaster, upon failing to make payment, lost his right to occupy the lot 16 days after the date the payment was due.

Following is a copy of Section 9 of the Landlord Tenant Act which states...

9. Right of re-entry for non-payment of rent

In every lease in writing whenever made, unless it is otherwise agreed, and in every lease by parol, there shall be implied an agreement that if the rent reserved, or any part thereof, remains unpaid for fifteen days after any of the days on which it ought to have been paid, although no formal demand thereof has been made, the landlord may, at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, re-enter, and have the premises again, repossess and enjoy as of his former estate

Simply put, if rent was not paid within 15 days after it was due, the landlord regains possession, and the tenant is no longer a tenant or lessee.

Therefore, although Mr MacMaster initially had an agreement with the Co-op, that agreement ended at the time Mr MacMaster stopped abiding by the terms of the agreement by not making rent payments. That event occurred more than one year ago, and continued until the date I became owner of the property.

On that date, Mr MacMaster did not suddenly, once again, become a lessee under the Act, or otherwise. Mr MacMaster had lost his right to occupy the property. The Co-op had repossessed the property BY LAW.

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.

Does MacMaster owe "rent" to Sturgess?

The Director found that the sum of \$1,700.00 (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 MacMaster 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 MacMaster.

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. A Form 4, claiming that \$1700.00 was owing for rent, was mailed on May 8, 2020. The Director determined that the Form 4 is invalid due to this substantial discrepancy.

The Commission agrees with the Director's finding. While rent may be owed, it must be accurately quantified in a Form 4 in order to be valid.

While a further \$200.00 became owing as of June 1, 2020, MacMaster then paid \$1700.00 on June 10, 2020. At this point he had overpaid his rent. A further \$200.00 was due on July 1, 2020 but was not owing due to the overpayment. MacMaster attempted to pay the \$200.00 for July 2020 but was not initially successful due to technology issues. That \$200.00 payment was successfully paid by MacMaster later in July 2020.

MacMaster thus does not owe any rent to Sturgess.

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 LD20-196 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.