



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20029
Order LR20-34**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Orders LD20-204 and LD20-205 both dated August 11, 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 Orders LD20-204 and LD20-205 both dated August 11, 2020 issued by the Office of the Director of Residential Rental Property.

Order

This appeal asks the Commission to determine what the legal rent is and whether there should be a return of rent for any overpayment 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, Terrance Trainor, Executor of the Estate of Francis Trainor ("Trainor").

On June 9, 2020, Trainor filed with the Director of Residential Rental Property (the "Director") a Form 13 – Application by Lessee for Review of Proposed Rent Increase (the "Form 13 application") indicating:

"Rent was \$100 per month when owned by the Trailer Park Co-op. The park was sold as of May 1, 2020 to the new owner. The new owner charged \$100 for May 2020 rent and sent an email to say that effective Jun 1, 2020 rent would be increased to \$200 per month. No formal Notice of Increase in Rent was received. On June 1, 2020, \$200 was paid to the Lessor on threat of eviction."

On June 12, 2020, Trainor filed with the Director a Form 2 – Application for Enforcement of Statutory of Other Conditions of Rental Agreement seeking an Order than an amount found to be owed be paid (the "Form 2 application").

Both matters were heard in two parts by the Director on July 24 and July 29, 2020.

In Order LD20-204, dated August 11, 2020 (the "Order") the Director allowed Trainor's Form 2 application and ordered Sturgess to pay Trainor \$100.00 and set rent for the site at \$100.00 per month until raised in accordance with the **Act**.

In Order LD20-205, dated August 11, 2020 (the "Second Order") the Director dismissed Trainor's application.

The appeal was heard by the Commission on October 8 2020. Sturgess appeared on her own behalf. Trainor and Lori Trainor ("Mrs. Trainor") appeared on their 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 Trainor on appeal.

Disposition

The appeal is denied and Director's Orders LD20-204 and LD20-205 are confirmed.

The Issues

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

1. What is the monthly rent?
2. Should there be a return of rent?

What is the monthly rent?

Trainor paid \$100.00 rent via e-transfer to Sturgess for the month of May 2020. The funds were accepted. Sturgess then sent Trainor an email confirming receipt of the May 2020 rent payment and advising that the rent was increasing to \$200.00 per month effective June 1, 2020. No application for a rental increase was made. No notice as required under the *Act* was provided to Trainor.

At the hearing before the Commission, Sturgess made a lengthy argument (see Exhibit E-19).

Page 107 of the record contains an email which is determinative of this matter:

Re: Trailer lot rent - 50 Courtney Crescent

*Vector Bio-Tech Solutions [email redacted]
Sun 2020-05-03 8:51 PM
To: Lori Trainor [email redacted]*

*Thank you Ms. Trainor. I am aware you are up to date - hence why no letter to 50 Courtney Crescent.
Thank you*

I am giving notice though that as of June 1st lot rent will be 200 per lot.

The May 3, 2020 email above is clear. The rent paid for May, which happened to be \$100.00, was accepted and the account considered up-to-date. This confirmed the rent as \$100.00 per month. Sturgess aka Vector Bio-Tech Solutions also gave "notice" that the rent would be \$200.00 as of June 1, 2020.

There is no evidence that Sturgess served a FORM 10 NOTICE OF INCREASE IN RENT OF RESIDENTIAL PREMISES on Trainor. Nor is there any evidence that Sturgess served and filed a FORM 12 APPLICATION BY LESSOR FOR APPROVAL OF RENT INCREASE EXCEEDING PERCENTAGE ALLOWED BY REGULATION for what amounts to a 100% increase in rent. There is no evidence that a FORM 15 LESSOR'S STATEMENT OF INCOME AND EXPENSES was served and filed. There is no evidence that the Director held a hearing and ordered a 100% rental increase for 50 Courtney Crescent.

Accordingly, Sturgess gave "notice" to Trainor of a rental increase that was illegal under the *Act*. This "notice" was in no way a lawful notice required under the *Act*.

Until such time as the requirements of the *Act* have been fulfilled and any increase granted by the Director, the monthly rent for 50 Courtney Crescent remains at \$100.00.

Should there be a return of rent?

On May 31, 2020, Trainor paid \$200.00 by e-transfer for the month of June 2020 to avoid receiving an eviction notice (see page 45 of the record). Trainor paid \$200.00 by e-transfer for the month of July 2020 on June 29, 2020. Trainor paid \$200.00 by e-transfer for the month of August on July 30, 2020. Sturgess then sent \$200.00 via e-transfer to Trainor. The Director issued Order LD20204 and LD20-205 on August 11, 2020. Trainor then proceeded to pay rent for September and October in the amount of \$100.00, both via e-transfer sent prior to the first day of the month.

The Commission finds that there should be a return of rent in the amount of \$100.00 payable by Sturgess to Trainor.

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 LD20-204 and LD20-205 are 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.