



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20035  
Order LR20-35**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Order LD20-240 dated September 14, 2020 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on Thursday, the 29th day of October, 2020.

Erin T. Mitchell, Panel Chair & Commissioner  
M. Douglas Clow, Vice-Chair

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

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# Order

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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, David Blackett ("Blackett").

On September 2, 2020 Sturgess served Blackett with a notice to terminate their rental agreement due to alleged non-payment (the "Form 4"). The termination was to be effective October 3, 2020, and cited the following reasons:

*"You have failed to pay your rent in the amount of \$200.00, which was due on the 1<sup>st</sup> day of September, 2020 (s. 13 of Act);"*

Blackett filed an application to set aside the notice of termination on September 8, 2020 (the "Form 6").

The matter was heard by the Office of the Director of Residential Rental Property (the "Director"). In Order LD20-240, dated September 14, 2020 (the "Order") the Director allowed Blackett'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 16, 2020. Sturgess appeared on her own behalf. Blackett 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 Blackett on appeal.

## Disposition

The appeal is denied and Director's Order LD20-240 is confirmed.

## The Issues

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

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

### Did Sturgess and Blackett have a “rental agreement”?

During the course of the hearing, Blackett emailed the Commission photographs of a signed rental agreement bearing the date of May 1, 2020. Sturgess testified that this agreement was actually signed on June 8, 2020 and both parties “agreed” to backdate it to May 1, 2020. Blackett testified that the backdating was not discussed with him. The agreement establishes lot rent at \$200.00 per month.

The Commission finds that while Blackett may not have explicitly agreed to the backdating of the agreement, he did acquiesce to the backdating of the agreement to May 1, 2020 by signing the agreement.

The Commission finds that there is a valid rental agreement between the parties establishing lot rent at \$200.00 per month.

### Does Blackett owe rent to Sturgess?

The evidence before the Commission reveals that the parties had entered into a separate payment plan to deal with alleged past lot fee arrears. As detailed in Commission Orders LR20-27 and LR20-28 (subsequently followed in Orders LR20-32, LR20-33 and LR20-34), such arrears are not rent and are not within the jurisdiction of the Director or the Commission. The evidence before the Commission indicates that Blackett made payments in June and July 2020 towards these alleged arrears and also paid rent.

On August 25, 2020 Blackett made a \$200.00 payment by e-transfer which he identified as rent for September 2020. On September 21, 2020 he made a \$200.00 payment by e-transfer which he identified as rent for October 2020. In receipts subsequently issued by Sturgess, she attempted to characterize both payments as payments towards the arrears.

Sturgess served Blackett with a Form 4 on September 2, 2020 alleging that rent for September 2020 in the amount of \$200.00 had not been paid.

In her arguments before the Commission, Sturgess submits that Blackett “forfeited the right to occupy the lot.” Sturgess asserts that the *Landlord and Tenant Act*, Cap. L-4 applies to the previous Cooperative and the lot fees payable to that Cooperative.

In questioning by the Commission panel, Sturgess acknowledged that she did not have a finding from the Supreme Court of Prince Edward Island determining that the *Landlord and Tenant Act* applies to this matter.

As set out in Orders LR20-32 and LR20-33, neither the Director nor the Commission has any jurisdiction to make a determination as to whether the *Landlord and Tenant Act* applies to this matter.

To the extent that Sturgess wishes to pursue the alleged arrears against Blackett, she must do so in a forum with jurisdiction rather than unilaterally attempt to characterize rent payments as payments towards alleged arrears.

The September 2, 2020 Form 4 is invalid as Blackett has paid his lot rent with clearly identified payments for rent for the months of September and October.

Accordingly, Blackett does not owe 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 LD20-240 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this 29<sup>th</sup> day of October, 2020.

**BY THE COMMISSION:**

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(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &  
Commissioner

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(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.*