



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20041  
Order LR20-40**

**IN THE MATTER** of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Kings Square Non-Profit Housing Corporation against Order LD20-298 dated October 29, 2020, issued by the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on Friday, the 18th day of December, 2020.

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

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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 question of whether a landlord can evict tenants under the *Rental of Residential Property Act* when the rental agreement clearly states that the term of the lease is for not longer than twelve (12) months.

## Background

The Appellant, Kings Square Non-Profit Housing Corporation (the “Housing Corporation”), leased an apartment at 139-143 Weymouth Street, Charlottetown, PE (the “Premises”) to Wilfred Doyle (“Mr. Doyle”) and Shelley Mosher (“Ms. Mosher”) (collectively the “Tenants”) for a one-year fixed term from September 1, 2019 to August 31, 2020.

The rental agreement generally follows the standard format set out in the *Rental of Residential Property Act* Regulations (the “Regulations”). There is, however, a paragraph included at the top of the document which states:

*This lease is for tenants selected to stay no more than twelve (12) months at our 6 unit apartment building at 139-143 Weymouth Street, Charlottetown.*

The rental agreement also contains a Schedule “D” which reiterates that the term of the lease is for 12 months and cannot be renewed.

The Commission notes that in Order LD-250 the Director of Residential Rental Property (the “Director”) dealt with the same parties in respect of the same Premises. The Director made a determination that the Premises is exempted under the Regulations as it is considered to be “temporary shelter”, specifically a “transitional house”. The Director, in that Order, also made a finding in the alternative that if the Act did apply to the Premises, then the rental agreement could not be terminated except for cause.

Order LD-250 was not appealed by the Housing Corporation. Instead, the Housing Corporation initiated new proceedings on the basis that the Premises are *not* exempt from the Act.

On September 30, 2020, the Housing Corporation served the Tenants with a Notice of Termination by Lessor of Rental Agreement (“Form 4”) with an effective date of October 30, 2020. On October 7, 2020, the Tenants filed with the Director an Application by Lessee to Set Aside Notice of Termination (“Form 6”).

In Order LD20-298, the Director found that the Form 4 was invalid and ordered that the rental agreement continue to be in full force and effect.

The Housing Corporation appealed the decision in these new proceedings.

The Commission heard the appeal on December 3, 2020, via telephone conference call. The Housing Corporation was represented by Counsel Michael Drake and Erin Divine; Mr. Doyle appeared on his own behalf. Ms. Mosher did not participate.

## Disposition

The Commission dismisses the appeal.

## The Issues

There are several matters that are not in dispute. The parties do not dispute that the rental agreement was signed and that it contained the provisions noted above regarding the duration of the agreement. Mr. Doyle acknowledged at the hearing that he was aware that the fixed term of the rental agreement ended on August 31, 2020. Mr. Doyle stated at the hearing that as far as he knew, his rent for the unit was still being paid. Counsel for the Housing Corporation did not dispute this assertion.

Given the history of the dispute between the parties, for clarity purposes the Commission will consider whether the Premises are exempt from the application of the Act. There are therefore two issues for the Commission to consider:

1. Whether the Premises are exempt from the application of the *Rental of Residential Property Act*? And
2. Whether the Housing Corporation can enforce the fixed-term rental agreement and evict the Tenants at the expiry of that term?

## Are the Premises exempt from the Act?

The Commission finds that the Premises are not exempt from the application of the Act.

As stated above, the form of the rental agreement complies in general terms with the standard form rental agreement set out in the Regulations.

The evidence and submissions before the Commission do not establish that the Premises are exempt from the application of the Act. Subsection 1(d) of the Regulations is the only exemption category under which the Premises could potentially fall. It reads as follows:

1. *The following premises are exempt from the provisions of the Act:*

...

*(d) premises which provide therapeutic or rehabilitative services or temporary shelter such as transition houses and hostels and other such premises which have supervisory services as that term is defined in the Community Care Facilities and Nursing Homes Act;*

Beyond the stated term of the rental agreement, there is no evidence before the Commission that establishes the Premises fall under any of the categories listed in subsection 1(d) of the Regulations.

Counsel for the Housing Corporation stated, both in written submissions before the Director as well as in oral argument before the Commission, that the Premises is not traditional transitional housing, and that it does not offer therapeutic, rehabilitative or supervisory services. Further, in written submissions Counsel for the Housing Corporation stated:

*The [Housing Corporation] is just that: a Landlord, and the Tenants are simply Tenants...*

*The Landlord respectfully submits that the premises fall within the operation of the Act, and are not exempted premises.*

...

*Put simply, the premises were leased to the Tenants on a fixed term basis with no option to renew. There is nothing in the nature of the premises or the rental relationship which would provide for an exemption from the operation of the Act.*

The Commission agrees with and accepts the position put forward by the Housing Corporation. The Premises is not exempt from the application of the Act.

## **Can the Housing Corporation enforce the fixed-term rental agreement?**

The Commission disagrees with the submissions of the Housing Corporation, and finds that, notwithstanding the stated term of the rental agreement, the Tenants cannot be evicted based solely on the expiry of the term.

Counsel for the Housing Corporation argued that the issue in this case stems from the unique business of the Housing Corporation, which provides housing to individuals and families who are coming out of traditional transitional or emergency/short-term housing arrangements and who would benefit from an affordable, respectable address to enable them to get back on their feet. The Commission was advised that the Housing Corporation has been providing this service, i.e., 12-month fixed-term non-renewable leases, to individuals and families for the last 30-32 years. This is the first time that a tenant has declined to leave at the end of the fixed term of a lease.

The Housing Corporation argues that there appears to be a gap in the legislation in that the Act does not contemplate a true fixed-term arrangement with no option to renew. The Housing Corporation submits that this gap makes it impossible for landlords to ever evict a tenant without cause, notwithstanding that the parties may have agreed to specific terms, such as the fixed duration of a non-renewable lease.

Section 17 of the Act deals with what occurs at the end of a fixed-term rental agreement:

*17.(1) Except as provided in subsection (2), a fixed term rental agreement which has not been terminated pursuant to section 11, 13, 14 or 15 shall be deemed upon its expiration to be converted to a month to month rental agreement.*

*(2) With respect to premises licensed under the Tourism Industry Act R.S.P.E.I. 1988, Cap. T3.3, a fixed term rental agreement for a continuous period of one month or more which has not been terminated pursuant to section 11, 13, 14, or 15, shall be deemed to be terminated on the expiry date.*

The Premises does not fall within the licensing provisions of the *Tourism Industry Act*, and so subsection (2) does not apply.

Part III of the Act governs how a rental agreement can be terminated. Section 11 describes how a *tenant* can terminate a rental agreement. Sections 12-15 describes how a *landlord* can terminate a rental agreement.

Section 12 is determinative in this matter. It reads as follows:

*12. A lessor shall not terminate a rental agreement, whether of fixed or indeterminate duration, other than for a cause set out in section 13, 14 or 15.*

The Housing Corporation is correct in noting that the Act does not contemplate a true fixed-term arrangement. However, the Commission finds that this is a feature, and not a bug, within the legislation.

The Act gives tenants the ability to enforce the expiry date of a fixed-term rental agreement (see subsection 11(2)). The Act very clearly does not afford landlords the same ability, and instead converts fixed-term agreements to month-to-month agreements (per section 17) unless a landlord terminates the agreement in accordance with sections 13, 14 or 15.

This interpretation of the Act is not novel. In Order LR00-02 the Commission stated:

*The Act provides the opportunity for a lessor and lessee to enter into a fixed term rental agreement. The Act also provides under Section 12 that a lessor can not terminate a rental agreement except for cause.*

...

*The intent of Section 12 is to provide a substantial level of security for lessees in their rental arrangements. This is achieved by requiring the lessor to continue a rental arrangement unless there is a specifically identified cause to permit termination.*

The Housing Corporation agrees that the rental agreement is subject to the Act and that a traditional landlord and tenant relationship exists. As such, the rental agreement was deemed, via operation of subsection 17(1), upon its expiry on August 31, 2020, to be converted to a month-to-month agreement. The Housing Corporation has not alleged nor applied for relief under any of sections 13, 14 or 15 of the Act, and indeed acknowledged at the hearing that it has no grounds at the current time to do so.

The question remains whether the fundamentals of contract law should apply to the agreed-upon terms of the rental agreement. The Housing Corporation argues that the fact that the Tenants knew at signing, acknowledged in writing in June 2020, and acknowledged at the hearing of this appeal that the rental agreement expired in August 2020, should allow the Housing Corporation to enforce the agreement.

Schedule “D” of the standard form rental agreement permits for the inclusion of additional terms and conditions that may be agreed upon between the parties. Schedule “D” as set out in the Regulations notes that “*These additional terms or conditions may not conflict with the requirements of the Act*”.

Schedule “D” of the rental agreement signed in this case included the following terms:

- *No Smoking of cigarettes, cigars, e-cigarettes, cannabis or like products shall be permitted anywhere in the premises or common areas, except in the case of a Lessee who holds a copy of a valid and current medical marijuana certificate which must be provided to the Lessor.*
- *No Pets of any kind shall be permitted anywhere in the premises or the common area.*
- *No Alcohol.*
- *This agreement is for a maximum rental period of twelve (12) months from start date to finish date.*
- *This rental agreement does not have an option for renewal.*

The first three, and arguably the fifth bullets in this list do not conflict with the requirements of the Act. However, the Commission finds that the fourth bullet, which prescribes the maximum rental period, is problematic.

Subsection 9(4) of the Act states as follows:

*(4) In addition to the statutory conditions, a lessor and lessee may provide in a rental agreement for other benefits and obligations that do not conflict with this Act or the provisions of the standard form.*

As stated above, section 12 of the Act is unambiguous in that a landlord may not terminate a rental agreement except in accordance with sections 13, 14 or 15. Section 12, read together with section 17, is a deliberate statement by the Legislative Assembly that fixed-term rental agreements at their expiry convert to month-to-month agreements, and cannot be terminated except for cause.

A condition in a rental agreement which attempts to negate the provisions of section 12 and 17 of the Act is clearly contrary to subsection 9(4). Such a condition directly conflicts with the Act.

In this case, we have a traditional landlord and tenant relationship; a fixed-term rental agreement that has expired and is now deemed to be month-to-month; and an acknowledgement by the Housing Corporation that cause to otherwise terminate the rental agreement does not exist.

Pursuant to the provisions of the Act cited above, the Commission finds that the rental agreement continues to be valid.

The Commission wishes to express that its findings in this case are in no way a commentary on the good and valuable service provided by the Housing Corporation to individuals and families who find themselves in need of affordable housing options within the City of Charlottetown. The Commission must, however, interpret and apply the Act in its current form.

**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; and
2. The rental agreement remains in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 18<sup>th</sup> day of December, 2020.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Erin T. Mitchell, Panel Chair &  
Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Jean Tingley)

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Jean Tingley, Commissioner

## NOTICE

Subsections 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.*