



**Docket LR21016**

**Order LR21-017**

**IN THE MATTER** of an appeal filed under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* (the "Act") by Charles Duffy against Order LD21-128 dated April 9, 2021, issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on, the 17<sup>th</sup> day of May, 2021.

**Erin T. Mitchell, Panel Chair & Commissioner**

**M. Douglas Clow, Vice-Chair**

**Hearing Date: May 12, 2021**

Compared and Certified a True  
Copy

(Sgd.) Susan Jefferson

Commission Administrator  
Corporate Services and Appeals

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# Order

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# Order

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The Commission is asked to determine, on the particular facts of this case, whether the Appellant landlord may, on appeal, attempt to justify the eviction of five (5) tenants in order to renovate four (4) rental units.

## Background

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On April 13, 2021, the Commission received a Notice of Appeal from a lessor, Charles Duffy ("Mr. Duffy"), requesting an appeal of Order LD21-128 dated April 9, 2021, issued by the Office of the Director of Residential Rental Property (the "Director").

By way of background, the Director received a series of Form 6- Application by Lessee to Set Aside Notice of Termination (the "Form 6's") disputing a Notice of Termination by Lessor of Rental Agreement from each of the following lessees:

- a) Bobbi-Jo Crossman and Jonathan Ramsay regarding residential premises located at 20808 Trans-Canada Highway, Apartment #3, Crapaud, PE.
- b) Kim Dolphin regarding residential premises located at 20798 Trans-Canada Highway, Crapaud, PE.
- c) Barry Reeves regarding residential premises located at 20808 Trans-Canada Highway, Apartment #4, Crapaud, PEI;
- d) Heather Allen regarding residential premises located at 20808 Trans-Canada Highway, Apartment #5, Crapaud, PEI.

(all of the above-noted lessees hereinafter collectively referred to as the "Tenants").

Attached to each of the Form 6's was a Form 4- Notice of Termination by Lessor of Rental Agreement dated February 11, 2021 (the "Form 4's").

The matter was heard by the Director on April 1, 2021. In Order LD21-128, the Director allowed the Tenants' applications to set aside the notice of termination, and declared that the Tenants' rental agreements continue to be in full force and effective.

Mr. Duffy appealed.

The appeal was heard by the Commission by way of telephone conference call on May 12, 2021. Tessa Hills represented the Appellant. Mr. Duffy testified and Ramona Roberts was present on the conference call. The Tenants, although fully notified of the telephone conference call, did not participate.

## Disposition

The appeal is allowed and Director's Order LD21-128 is reversed.

## The Issue

Did the Form 4s served on the Tenants adequately advise of the nature of the renovations?

### Analysis

Clause 15(1)(c) sets out the notice requirements where a lessor seeks to terminate a rental agreement to conduct renovations:

15. *Personal use, renovations, etc.*

(1) *Where the lessor in good faith seeks to*

...

*(c) renovate the premises where the nature of the renovations are advised to the lessee and are such that the renovations cannot be carried out while the lessee occupies the premises;*

...

*the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.*

[Emphasis added.]

A Form 4s served on the Tenants checked off the following:

*(n) ..... I want to renovate the premises in the manner described on Appendix "A" attached hereto, and the renovations cannot be carried out while you are occupying the premises (s.15(1)(c) of Act);*

Mr. Duffy attached an Appendix A to each of the Form 4s served on the Tenants. Each Appendix A does not contain an itemized description of the specific tasks to be completed during the renovation. They do, however, describe the specific services that will be lost and give a rough estimate of how long it will take to complete the project:

*CA Ventures has hired a contractor to carry out major renovations at the property located at 20798 TransCanada Highway, Tryon, PEI.*

*The existing units will not be habitable during this renovation due to interruptions in water service, electrical service, sewer service, heat, and access to laundry.*

*There is anticipated to be significant noise and dust and the project is expected to take several weeks to complete. It is difficult to put an exact timeline on construction as the building is old and there may be unexpected complications which may arise once the project begins.*

The *Act* requires the following when a lessor seeks to terminate a rental agreement for renovations:

- The renovations cannot be carried out while the lessee occupies the premises.

- The nature of the renovations is advised to the lessee.
- The lessor must be acting in good faith.

The phrase “the nature of the renovations” is not defined in the Act.

Mr. Duffy filed various documents at the original hearing before the Director which describe in detail the work proposed to be done. While this information was furnished too late to be considered in an analysis of the adequacy of the Form 4 notice, it satisfies the Commission that the renovations could not be performed with the premises occupied and that Mr. Duffy is acting in good faith.

Mr. Duffy and Ms. Hills both advised the Commission that some renovations had begun at the Premises prior to the Form 4s being served, and that it was in large part upon the discovery of the state of the wiring in the Premises that they realized the full extent of the work that would be required and the safety hazard that existed. This information was confirmed by an affidavit of the licensed electrician hired by the Respondent.

While it is preferable for an Appendix A to specifically set out the work planned to be done, the Commission finds that the various Appendix As served by Mr. Duffy, viewed within the totality of evidence, are adequate to meet the statutory notice requirement set out in clause 15(1)(c).

**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 allowed.**
2. **Director’s Order LD21-128 is reversed.**
3. **The rental agreement between the parties shall terminate as of May 31, 2021, at 11:59 p.m. and the lessees shall vacate the Premises by that date and time.**

**DATED** at Charlottetown, Prince Edward Island, this 17<sup>th</sup> day of May, 2021.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &  
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

## 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.*