



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20045
Order LR21-03**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Heather Butler against Order LD20-319 dated November 12, 2020, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 13th day of January, 2021.

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 under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Heather Butler against Order LD20-319 dated November 12, 2020, issued by the Director of Residential Rental Property.

Order

This appeal asks the question of whether the Commission has jurisdiction when an individual books accommodations online with a tourism operator on a nightly basis. It does not.

Background

The Appellant, Heather Butler (“Ms. Butler”), booked a room through the website of Royalty Maple Properties Inc. (the “Respondent”), located at 89 Malpeque Road, Charlottetown, PE (the “Room”) for the period May 24, 2020 to June 23, 2020. The rate of the Room was \$76.46 plus HST and a Tourism Levy each night. Ms. Butler paid \$200 representing a credit card authorization fee on May 23, 2020 and \$2,628.93 on May 25, 2020, representing the Room rate, HST and the Tourism Levy charge.

Ms. Butler vacated the Room on June 17, 2020.

On June 22, 2020, Ms. Butler filed with the Director of Residential Rental Property (the “Director”) an Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking a return of rent and other expenses.

The Director heard the matter and in Order LD20-319 denied Ms. Butler’s application.

Ms. Butler appealed.

The Commission heard the appeal on January 12 2020. Ms. Butler appeared by way of telephone conference call. Chris Daly (“Mr. Daly”) represented the Respondent and also appeared by way of telephone conference call.

Disposition

The Commission finds that it has no jurisdiction to hear this appeal, and Order LD20-319 is hereby quashed.

The Issue

The Commission can hear and adjudicate rental disputes that are properly within its jurisdiction. This jurisdiction is granted by the Legislative Assembly via the *Rental of Residential Property Act* (the “Act”). This applies equally to the Office of the Director of Residential Rental Property.

In Order LD20-319, the Director did not address the issue of its jurisdiction to decide this matter.

The Commission must find jurisdiction in order to decide this appeal. Whether the nightly rental of the Room for 30 consecutive nights constituted a “rental agreement” as defined in the *Act* is determinative of whether the Commission has jurisdiction to decide this matter.

Is there a Rental Agreement?

The Commission finds that there was no rental agreement as defined in the *Act*.

The following definitions from section 1 of the *Act* are instructive:

1. ...

(g) “lessee” means a person to whom permission is given, pursuant to a rental agreement, to occupy residential premises and includes his assigns and legal representatives;

(h) “lessor” means the owner or other person permitting the occupation, pursuant to a rental agreement, of residential premises and includes his heirs, assigns, personal representatives and successors in title;

...

(o) “rental agreement” or “agreement” means an agreement, whether written or oral, express or implied, whereby a lessor confers upon a lessee the right to occupy residential premises;

(p) “residential premises” or “premises” includes

(i) any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by a natural person as a residence or that part of any such place that is or may be occupied by a natural person as a residence, whether such residential premises are furnished, partly furnished or unfurnished,

...

[Emphasis added.]

The evidence before the Commission is that Ms. Butler booked the Room online on a nightly basis for 30 consecutive nights. She was charged per night, plus HST and a Tourism Levy charge. No advance discussions took place with the Respondent as to the nature of her stay, as the booking was made through the Respondent’s online booking service.

Mr. Daley confirmed that there was never an intention by the Respondent to enter into a monthly agreement with Ms. Butler. In written submissions he stated (and confirmed during the hearing of the appeal) that she “did not sign a rental agreement. She signed a guest registration form for Nightly Rentals”.

Mr. Daley testified that the Respondent does offer monthly rentals outside of the tourist season. For those arrangements, he testified that tenants are required to enter into standard “IRAC agreements”, being the standard form rental agreement established by regulation. Mr. Daley further stated that monthly rentals are not offered during the tourist season, which begins in May. He further testified that dishes, linens and additional furniture are provided in nightly rentals, but not in monthly rentals. He noted that the Room as provided to Ms. Butler had dishes, linens and the full compliment of typical motel room furniture.

The Commission finds that there was no meeting of the minds to suggest that the parties intended to enter into a rental agreement – written or oral, express or implied - as contemplated by the *Act*. It was a nightly rental at a nightly rate with terms and conditions that so applied.

In any event, the Room that was booked by Ms. Butler was in a commercial tourism establishment. At the hearing before the Commission, Mr. Daley confirmed that the Room (located within Royalty Maples Motel & Cottages) is licensed under the *Tourism Industry Act*.

Subsection 1(c) of the *Act's* Regulations (the "Regulations") reads:

1. *Exempted premises*

The following premises are exempt from the provisions of the Act:

...

(c) premises licensed under the Tourism Industry Act R.S.P.E.I. 1988, Cap. T-3.3, except when such premises are provided as accommodation for a guest for a continuous period of one month or more;

The Commission finds that the mere duration of Ms. Butler's intended stay in the Room is not sufficient to invalidate the exemption prescribed in the Regulations. In consideration of all of the facts of this matter, the Commission finds that the Room was an exempted premises as defined under subsection 1(c) of the *Act's* Regulations.

The Commission finds that there is no rental agreement, the *Act* does not apply, and the Commission has no jurisdiction to hear the appeal.

If the Appellant wishes to pursue her claims as against the Respondent, she must do so in another forum.

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. Order LD20-319 is quashed.

DATED at Charlottetown, Prince Edward Island, this 13th day of January, 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.