



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20046
Order LR21-05**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Order LD20-378 dated December 21, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Thursday, the 28th 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 filed under Section 25 of the Rental of Residential Property Act (the "Act") by Janet Sturgess against Order LD20-378 dated December 21, 2020 issued by the Office of the Director of Residential Rental Property.

Order

This appeal asks the Commission to determine whether a rental agreement should be terminated due to an alleged unauthorized sublet to another person.

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"). At the time of purchase, there were 36 mobile home sites on the Property. One such site was occupied by a mobile home owned by the Respondent, Terrance Trainor, Executor of the Estate of Francis Trainor ("Trainor"). Trainor's son, Terrance Joseph Trainor ("TJT") resided in the mobile home.

On December 8, 2020, Trainor filed with the Director of Residential Rental Property (the "Director") a Form 6 – Application by Lessee to Set Aside Notice of Termination dated December 8, 2020 (the "Form 6"). Attached to the Form 6 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated November 30, 2020 for effect on December 30, 2020 (the "Form 4"). The reason Sturgess served the Form 4 was for the following reason:

"You have purported to assign or sublet the premises in violation of the Act (s. 14(1)(h) of the Act)."

The matter was heard by the Director on December 13, 2020 and the Director ordered that the rental agreement continue to be in full force and effect.

Sturgess appealed.

The appeal was heard by the Commission on January 21, 2021. 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 and the reasoning contained on Director's Order LD20-378, as well as the materials filed and submissions made by Sturgess and Trainor on appeal.

Disposition

The Commission dismisses the appeal.

The Issues

1. When did Sturgess first become aware that Trainor sublet the mobile home to his son?
2. Did Sturgess acquiesce to the subletting of the mobile home?

When did Sturgess first become aware that Trainor sublet the mobile home to his son?

Mrs. Trainor testified that TJT moved into the trailer in August 2019 and the Co-operative was fully aware of this. As previously stated, Sturgess took ownership of the Property on April 27, 2020.

A May 1, 2020 receipt was issued by Sturgess to “Lori Trainor”. On May 3, 2020 there was email correspondence between Mrs. Trainor and Sturgess concerning rent for “Terry Trainor”. On May 17, 2020 there was email correspondence from Sturgess addressed to “Lori and Terry”.

The May 2020 rental agreement lists the lessee as “Terrance P Trainor”. The June 1, 2020 receipt lists “Terry Trainor” as tenant.

The Commission takes notice from this appeal and earlier appeals that Sturgess lives within the Property. Sturgess’ evidence as to alleged violations of “Park Rules” indicates that she keeps a close eye on the Property.

The Commission finds that Sturgess was aware that TJT was living in the mobile home and became aware in May 2020 that Mrs. Trainor was involved in paying the lot rent and that Trainor was the tenant.

Did Sturgess acquiesce to the subletting of the mobile home?

Black’s Law Dictionary, 9th Edition defines acquiesce:

acquiesce (ak-wee-es), vb. To accept tacitly or passively; to give implied consent to (an act) ...

As previously noted, Sturgess became aware that one person was living in the mobile home while another was paying the lot rent in May 2020. The Commission finds that Sturgess acquiesced to this situation. It would not be a particularly unusual situation for a parent to own a mobile home and be responsible for paying park rent while a son lived in that mobile home.

It was not until November 30, 2020 that Sturgess issued a Form 4 seeking to terminate the rental agreement on the basis a violation of s. 14(1)(h) of the *Act*.

In Commission Order LR20-34, issued on October 16, 2020, the Commission denied an appeal by Sturgess with respect to the lot rent to be paid by Trainor. It would appear that the matter of subletting the lot became an issue to Sturgess after she was unsuccessful at establishing a higher lot rent.

Having previously acquiesced to the subletting of the mobile home lot, the Commission finds that Sturgess cannot later raise s.14(1)(h) of the *Act* as a basis for terminating the rental agreement.

Accordingly, the Commission agrees with the decision of the Director in Order LD20-378, the appeal is denied and the rental agreement remains in full force and effect.

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 Director's Order LD-378 is confirmed.
2. The rental agreement remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this **28th 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

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.