



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21006
Order LR21-07**

IN THE MATTER of an appeal filed under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* (the "Act") by Tanya Burke against Order LD21-057 dated February 19, 2021, issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Thursday, the 11th day of March, 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 subsections 25(2) and 26(1) of the *Rental of Residential Property Act* (the "Act") by Tanya Burke against Order LD21-057 dated February 19, 2021, issued by the Office of the Director of Residential Rental Property.

Order

This appeal asks the Commission to determine whether an eviction notice was valid, based on a claim of improper behaviour and actions on the part of occupants of a residential premises.

Background

On January 24, 2021, a landlord, Greg MacKay ("MacKay") served Tanya Burke ("Burke") and all other occupants (collectively the "Tenants") with a notice to terminate their rental agreement due to alleged behaviour of the Tenants and their guests (the "Form 4"). The termination was to be effective February 24, 2021, and cited the following reasons:

"You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees (s.14(1)(a) of Act);

You have failed to fulfill your responsibility for ordinary cleanliness of the interior of the residential premises or for damage caused by you or persons you permitted on the premises (s.14(1)(a) of the Act).

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you seriously impaired the safety or lawful right or interest of me or other lessees in the residential property (s. 14(1) (e) of Act)."

Burke filed an application to set aside the Notice of Termination on February 3, 2021 (the "Form 6").

The matter was heard by the Office of the Director of Residential Rental Property (the "Director") on February 18, 2021. In Order LD21-057 dated February 19, 2021 (the "Order"), the Director found that the Form 4 was valid and that the rental agreement between the parties be terminated as of 11:59 p.m. on February 28, 2021.

The appeal was heard by the Commission on March 8, 2021, by way of telephone conference call. Burke appeared on behalf of the Tenants. MacKay appeared on his own behalf.

Appeals to the Commission under Act are re-hearings, as stated in subsection 26(2). As such, the Commission considered the evidence that was before the Director, as well as the materials filed and submissions made by Burke and MacKay on appeal.

Disposition

The Commission dismisses the appeal.

The Issues

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

1. Did the behaviour of the Tenants warrant eviction?
2. Did the Tenants fail to fulfill their responsibility for the ordinary cleanliness of the residential premises;
3. Did the actions of the Tenant impair the safety or lawful right or interest of MacKay or other lessees?

Did the behaviour of the Tenants warrant eviction?

Clause 14(1)(a) of the Act reads:

14. Grounds for termination

(1) The lessor may also serve a notice of termination upon the lessee where

(a) statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;

Section 6 of the Act sets out statutory conditions, of which Statutory Condition 3 is germane to this appeal:

STATUTORY CONDITIONS

6. Residential premises

Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:

...

3. Good Behaviour

The lessee and any person admitted to the premises by the lessee shall conduct themselves in such a manner as not to interfere with the possession, occupancy or quiet enjoyment of other lessees.

Emphasis added.

The documentary evidence before the Commission, including letters written by other lessees in adjacent apartments, suggests that the behaviour of the Tenants interfered with the quiet enjoyment of other lessees.

The testimony of Burke on the appeal corroborates this evidence.

Pursuant to Statutory Condition 3, the Commission finds that the test is not restricted to the behaviour of the lessee, but includes “any person admitted to the premises”. A co-tenant or co-occupant is a person admitted to the premises.

The Commission finds that the behaviour of the Tenants constitutes a breach of Statutory Condition 3, and a termination of the rental agreement is justified based on the evidence before the Director and before the Commission.

Did the Tenants fail to fulfill their responsibility for the ordinary cleanliness of the residential premises?

As a termination of the rental agreement is justified based on a breach of Statutory Condition 3, it is unnecessary for the Commission to determine this question.

Did the actions of the Tenants impair the safety or lawful right or interest of MacKay or other lessees?

As a termination of the rental agreement is justified based on a breach of Statutory Condition 3, it is likewise unnecessary for the Commission to determine this question.

As Burke testified that her rent is fully paid for the month of March 2021 and MacKay did not dispute this point, the Commission varies the termination of the rental agreement to 11:59 p.m. on **March 31, 2021**. In all other respects, Director’s Order LD21-057 is confirmed.

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 dismissed.
2. Director’s Order LD21-057 is confirmed, subject to a variation in the termination date of the rental agreement to 11:59 p.m. on **March 31, 2021**.

DATED at Charlottetown, Prince Edward Island, this **11th day of March, 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.