



Docket: LR21047

Order: LR21-50

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Keyvan Ashenaei against Order LD21-347 issued by the Director of Residential Rental Property and dated September 16, 2021.

BEFORE THE COMMISSION ON Tuesday, November 9, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Monday, October 25, 2021

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that an eviction notice was invalid.

BACKGROUND

Keyvan Ashenaiei (“Mr. Ashenaiei”) rents half of a duplex located at 250 Sleepy Hollow Road, Milton Station, PE (the “Premises”), to Jeff Budd and Stephanie Budd (“the Budds”). The Budds have lived in the Premises for approximately 11 years. Rent for the Premises is \$1,400 per month.

On August 10, 2021, Mr. Ashenaiei served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) to the Budds, citing that he wants possession of the Premises for a family member pursuant to clause 15(1)(a) of the *Act*.

On August 12, 2021, the Budds filed with the Director an Application by Lessee to Set Aside Notice of Termination.

In Order LD21-347 dated September 16, 2021, the Director ordered that the Form 4 was invalid and that the rental agreement continues to be in full force and effect.

Mr. Ashenaiei appealed.

The Commission heard the appeal on October 25, 2021, by way of telephone conference call. Melissa Trowsdale represented Mr. Ashenaiei as Counsel, and Mr. Ashenaiei and his son Mobin Ashenaiei participated. The Budds also participated and were assisted by Connor Kelly of the PEI Fight for Affordable Housing.

Disposition

The appeal is allowed and Director’s Order LD21-347 is reversed. Possession of the Premises is to be surrendered no later than January 31, 2022 at 11:59 p.m.

The Issue

Did the Director correctly determine that the Form 4 was invalid?

Analysis

Subsection 15(1) of the *Act* reads:

15. Personal use, renovations, etc.

(1) Where the lessor in good faith seeks to

(a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;

(b) convert the premises to a use other than residential use;

(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;

(d) demolish 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]

Mr. Ashenaei seeks to terminate the rental agreement with the Budds to allow his son Mobin Ashenaei to move into the Premises. Both Mr. Ashenaei and Mobin Ashenaei filed affidavits setting out the circumstances leading to Mobin Ashenaei seeking to reside in the Premises.

The Commission is satisfied that Mr. Ashenaei has satisfied the test of good faith at the time the Form 4 was served.

History Between the Parties

The Budds allege that Mr. Ashenaei has, in the past, attempted to raise their rent beyond the annual allowable amount, and being unsuccessful, he has filed this application in order to remove them from the Premises and raise the rent.

In February 2020, Mr. Ashenaei filed an application for a greater than allowable rent increase with respect to the Premises. He sought to remove electricity as an included service from the rental agreement. That application was initially approved by the Director, but then denied on appeal to the Commission in January 2021 (Order LR21-02).

Mr. Budd requested that the Commission consider the complete evidence package that was filed for Order LR21-02, as he believed it established a larger pattern of behavior by Mr. Ashenaei and his efforts to evict the tenants. The Commission did not formally enter this material into the record, but did include a copy of Order LR21-02 and notes that the Budds provided written submissions and copies of the material they deemed relevant from the hearing of Order LD21-02.

There is no question that the relationship between the parties has been strained from time to time. The Budds have taken issue with Mr. Ashenaei's previous dealings before the Director, and note the Director approved a greater than allowable rent increase for the Premises in 2017. They have complained that Mr. Ashenaei was slow to remedy issues with the clothes dryer. They were upset that he failed to remove debris from their yard in a timely manner following Post-Tropical Storm Dorian in the fall of 2019, and failed to properly maintain the lawn. Mr. Ashenaei has taken issue with the Budds' usage of electricity, which was the impetus for the 2020 application for a rent increase.

As held by this Commission in Order LR19-09, a strained relationship between a landlord and tenant does not preclude a successful application under clause 15(1)(a) of the *Act*:

[T]here is much evidence on the record, both in documents filed and in oral testimony, as to recent past difficulties between the parties. The evidence suggests that the relationship between the parties became strained in 2018 and remains so today.

While these difficulties may provide an alternate motive for terminating the tenancy, Order LR93-9 demonstrates that such motive may also co-exist with a lessor seeking, in good faith, possession of the premises in order to personally occupy the premises.

The question before the Commission is whether Mr. Ashenaei, in good faith, seeks possession of the Premises for his son.

Is Mr. Ashenaei Acting in Good Faith?

Director's Order LD21-347 provides [at paragraph 10] a review of the law regarding "good faith" in the context of an application pursuant to clause 15(1)(a) of the *Act*. The Commission confirms that in conducting a good faith analysis, it is appropriate to consider a landlord's conduct and motives in determining whether there is a genuine intention to occupy the Premises.

The reasons given by Mr. Ashenaei and Mobin Ashenaei in their sworn affidavits as to why they are seeking possession of the Premises were not directly challenged by the Budds, either by way of cross-examination or by contradictory written or oral evidence. Rather, the Budds allege that it is their belief that the notice of termination was served in furtherance of what they believe is Mr. Ashenaei's ongoing agenda to remove the Budds from the Premises.

The Director noted that Mr. Ashenaei sought possession of the Premises, rather than for the other side of the duplex, being Unit 252. The Director noted that both units are identical in footprint, and stated [at paragraph 12]:

[f]acing the scrutiny that comes with the Tenants having filed the Application, the burden of proof now lies with the Landlord to establish on a balance of probabilities that he chose the Premises over Unit 252 in good faith.

An analysis of whether Mr. Ashenaei was acting in good faith applies not to his decision to choose the Premises over Unit 252. Rather, the question is whether, at the time the notice was served, Mr. Ashenaei had a genuine intention for his son to occupy the Premises. The existence of a comparable unit is not in and of itself determinative in a good faith analysis. That said, the existence of Unit 252 and the fact that a choice was made between the units is relevant in considering the overall context and relationship between the parties, and may be relevant in determining whether there is another motive for having served the Form 4.

Mr. Ashenaei was forthright in his evidence both before the Director and in his affidavit filed on appeal that his reason for choosing the Premises over Unit 252 was because it was in his financial interest to do so. The tenants in Unit 252 pay for their own electricity. Mobin Ashenaei will not be charged rent, but will be responsible for all utilities and upkeep. The Commission accepts this as a reasonable explanation for choosing the Premises over Unit 252.

The Budds allege that the Form 4 was served because Mr. Ashenaei was unsuccessful in his application to remove electricity as an included service from the rental agreement, and he wants them evicted so he can raise the rent. The Commission notes that Order LD21-02 was issued in January 2021, but the application was made in February 2020, the hearing of which was delayed due to the COVID-19 pandemic. The Form 4 was served 7 months following the issuance of Order LD21-02, and a full 19 months after the application leading to that Order was initially made.

Mobin Ashenaei's evidence is that he now financially able to live independently and out of his parents' home. He made the decision in concert with his father in July 2021 that he would seek to occupy the Premises. The Form 4 was served in August 2021. He will not be paying rent, but will be responsible for utilities and upkeep. The Commission accepts this evidence, and finds the reasons given to be reasonable and credible.

Findings and Conclusion

The evidence provided in the affidavits satisfies the Commission that Mr. Ashenaei was acting in good faith when he served the Form 4. The explanations provided are reasonable, and have not been refuted by the Budds. Though the Commission acknowledges that there has been a breakdown of the relationship between the parties over time, the Commission nevertheless finds that Mr. Ashenaei seeks in good faith possession of the Premises for his son and Mobin Ashenaei has a genuine intention to occupy the Premises.

The appeal is therefore allowed.

The Commission notes that Mr. Ashenaei indicated in his Notice of Appeal that he was willing to extend the timeline upon which the Budds must vacate the Premises to the end of December 2021. In light of the passage of time since the hearing, the Commission orders that Mr. and Mrs. Budd surrender possession of the Premises on or before January 31, 2022 at 11:59 p.m.

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. **Possession of the Premises is to be surrendered on or before January 31, 2022 at 11:59 p.m.**
3. **A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, the 9th day of November, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell, 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* provides 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.