



Docket: LR21053

Order: LR21-52

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Gary Jenkins against Order LD21-422 issued by the Director of Residential Rental Property and dated November 8, 2021.

BEFORE THE COMMISSION ON Thursday, November 25, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, November 24, 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

Gary Jenkins (“Mr. Jenkins”) rents an apartment located at 71 Kensington Road, Charlottetown, PE (the “Premises”), to Valerie Arsenault (“Ms. Arsenault”). Ms. Arsenault has lived in the Premises since October 2015. Rent for the Premises is \$625 per month.

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

On October 17, 2021, Ms. Arsenault filed with the Director an Application by Lessee to Set Aside Notice of Termination.

In Order LD21-422 dated November 8, 2021, the Director ordered that the Form 4 was invalid and that the rental agreement continues to be in full force and effect.

Mr. Jenkins appealed.

The Commission heard the appeal on November 24, 2021, by way of telephone conference call. Both Mr. Jenkins and Ms. Arsenault participated.

Disposition

The appeal is allowed and Director’s Order LD21-422 is reversed. The rental agreement is terminated, effective 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 is 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. Jenkins seeks to terminate the rental agreement with Ms. Arsenault to allow his son to move into the Premises. At the hearing before the Director, Mr. Jenkins outlined the circumstances leading to his son moving home, and the method by which Ms. Arsenault's unit was chosen for his son's occupation.

In the present matter, neither the Director nor Ms. Arsenault questioned either the Landlord's good faith or his credibility. There was no evidence of a past history of disputes between the parties – in fact the parties were complimentary of each other. Indeed, the Director concluded [in paragraph 8] that the "... Notice was served on the Tenant in good faith."

Having found that Mr. Jenkins was acting in good faith, the Director nevertheless continued as follows:

[9] Turning to the merits of the termination of the rental agreement, the Officer notes that the Landlord did not provide any documentary evidence (such as a flight itinerary) nor did he provide witness testimony (written or verbal) from his son at the hearing. The Landlord provided only his testimony to why he served the Notice and gave brief detail to why and when his son intends to occupy the Premises. The Officer notes that although a landlord has right to terminate a rental agreement pursuant to subsection 15.(1)(a) of the Act, it is the onus of the landlord to prove, on a balance of probabilities, to the Officer that the reasons for the termination of the rental agreement are as such laid out in the Notice. The Officer finds that the Landlord has not provided enough evidence to satisfy the Landlord's burden of proof. As a result, the Officer finds that the Notice is dismissed and the Application is allowed. The rental agreement between the parties shall continue to be in full force and effect.

The Commission does not agree that Mr. Jenkins did not meet his onus. His uncontroverted evidence before the Director was that Mr. Jenkins served the notice so that his son could have a place to live upon his return from British Columbia. Ms. Arsenault challenged the notice based on her personal circumstances and the disruption that her eviction would cause, and not because of any allegation of bad faith or dishonesty on the part of Mr. Jenkins. In the result, the Director disregarded the totality of Mr. Jenkins' evidence relating to his son's intended occupation of the premises, without reasons.

This is not to suggest that in similar such cases additional evidence that supports a landlord's application under clause 15(1)(a) is not beneficial or helpful. In some cases, it may in fact be necessary to support a claim that a landlord is acting in good faith. In this case, however, the Commission finds that there was nothing in the evidence before the Director to warrant dismissing Mr. Jenkins' evidence outright.

In any event, on appeal the Commission received into evidence an e-mail from Mr. Jenkins' son, confirming he was moving back to Prince Edward Island and that he needed

an apartment. Though not necessary given the Commission's findings in this matter, the Commission takes notice that the e-mail received confirms the testimony of Mr. Jenkins that his son is moving home and needs a place to live.

The Commission acknowledges the difficulties that this decision will pose for Ms. Arsenault. The Commission empathizes with the concerns raised by Ms. Arsenault on appeal, but is required to apply the provisions of the *Act* in making a determination on this matter. The concerns and inconveniences articulated by Ms. Arsenault are certainly real, but are not ones that can be taken into account in this process.

At the hearing before the Commission, the Landlord advised that he was prepared to extend the termination date of the rental agreement from December 4, 2021 to January 1, 2022. In light of the circumstances and in order to afford Ms. Arsenault sufficient time to arrange her affairs, the Commission extends the termination date to January 31, 2022.

The Commission finds that the Form 4 is valid, and that the rental agreement is terminated, effective 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 and Director's Order LD21-422 is reversed.**
- 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 25th 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.