



**Docket: LR22026**

**Order: LR22-26**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Donald Wright, against Order LD22-111 issued by the Director of Residential Rental Property and dated April 14, 2022.

**BEFORE THE COMMISSION ON** Thursday, May 26, 2022.

Panel Chair - Erin T. Mitchell, Commissioner  
M. Douglas Clow, Vice-Chair

Hearing Date: Thursday, May 12, 2022

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# ORDER

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(Sgd.) Susan Jefferson  

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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 valid.

## **BACKGROUND**

Donald Wright (“Mr. Wright”) rents premises located at 6 Upper Hillsborough Street, Unit 3B, Charlottetown, PE (the “Premises”), from Lingzhi Zhang (“Ms. Zhang”). Rent for the Premises is \$400 per month and is due and payable on the first day of the month.

On April 2, 2022, Ms. Zhang served Mr. Wright with a Notice of Termination by Lessor of Rental Agreement (“Form 4”) for breaches of clause 14(1)(a) of the *Act*. The effective date of the Form 4 was April 8, 2022. Mr. Wright did not file an application to set aside the Form 4.

On April 4, 2022, Ms. Zhang filed with the Director an Application by Lessor for Earlier Termination.

The matter was heard by the Director on April 13, 2022. In Order LD22-111 dated April 14, 2022, the Director found that the Form 4 was valid, and ordered that the rental agreement be terminated effective 11:59 p.m. on May 3, 2022.

Mr. Wright appealed.

The Commission heard the appeal by way of telephone conference call on May 12, 2022. Jon Paul Wright (“JP Wright”) assisted Mr. Wright. Ms. Zhang also participated, and called Jamie Condon (“Mr. Condon”) as a witness.

## **Disposition**

The appeal is dismissed and Director’s Order LD22-111 is varied, as outlined below.

## **The Issue**

Did the Director correctly determine that the Form 4 was valid, and that an earlier termination date was warranted?

## **Analysis**

The Form 4 that was originally filed by Ms. Zhang alleged three particulars: one relating to an unpleasant odour emanating from Mr. Wright’s room, one relating to clutter in the room alleged to be a fire hazard, and one relating to alleged damage to the Premises a downstairs unit from a substance leaking through the floor of Mr. Wright’s room. The Director found that the Form 4 was properly served, and the Commission agrees with the finding that the Form 4 was valid.

The Commission notes that Mr. Wright did not file an application to set aside the Form 4, as is prescribed in section 16 of the *Act*. As such, Mr. Wright is deemed to have accepted the Form 4. Though JP Wright made submissions regarding the appropriateness of Ms. Zhang seeking to evict Mr. Wright, the *Act* does not give the Commission the ability to

consider same as Mr. Wright is deemed, by statute, to have accepted the Form 4. As such, the sole issue before the Commission is when Mr. Wright must vacate the Premises.

The evidence from JP Wright, and which was corroborated by Mr. Condon, is that the circumstances which led to the unpleasant odour have been resolved. JP Wright indicated that the odour was in large measure due to a freezer that had, unbeknownst to Mr. Wright, stopped working resulting in the spoilage of a significant amount of food. The evidence before the Commission is that the freezer has since been removed from the Premises. Mr. Condon testified that he believes that steps have been taken to clean both Mr. Wright's unit as well as the unit below, and as such the odour has improved. Though Mr. Condon and Ms. Zhang both expressed concern that with the warming weather the odour quite likely will return, there is insufficient evidence before the Commission to establish this is an ongoing issue.

With respect to the allegations of clutter within Mr. Wright's unit, the Commission finds that though the photographic evidence provided by Ms. Zhang does show a significant degree of clutter, the evidence from JP Wright is that members of Mr. Wright's family have taken steps since the Form 4 was filed to assist their father to improve the state of the Premises. Ms. Zhang did not provide evidence to refute this testimony. There was no evidence before the Commission to establish that a fire hazard did or does exist. Ms. Zhang did not provide evidence of routine inspections or of a continued pattern of clutter within the unit to justify an immediate eviction on that basis.

Finally, with respect to the allegation of the liquid, which had allegedly seeped through the floor of Mr. Wright's unit and into the unit below, the Commission finds that there remains a dispute as to the exact nature of the substance, which is largely irrelevant to the appeal. The photographic evidence of the presence of the liquid in the downstairs unit stops short of establishing the exact nature or cause of its presence, nor did Ms. Zhang provide any evidence with respect to the extent of the damage in the floor and the steps that would be necessary to remediate any such damage. Ms. Zhang did not provide any reports or any evidence of building inspections that were done to characterize the alleged damage to the two units. JP Wright testified that the source of the liquid had been removed, and that it was not an ongoing issue. Ms. Zhang did not provide any evidence to contradict this assertion.

In any event, Ms. Zhang's position that Mr. Wright needs to vacate the Premises immediately in order to allow her to conduct repairs or renovations to the unit are not grounds to support an immediate eviction of Mr. Wright. The Commission notes that pursuant to subsections 15(4) and 15(6) of the *Act*, evictions for renovations can only occur in limited circumstances. Ms. Zhang has not established that the renovations are necessary to protect or preserve the property or to protect the health and safety of persons, nor has she provided any of the requisite permits that would be necessary to establish such grounds.

As such the appeal is denied.

Order LD22-111 required Mr. Wright to vacate the premises on or before May 3, 2022. The Commission recognizes that Mr. Wright will need some time to find alternate accommodations, and as such varies the termination date to 11:59 p.m. on June 30, 2022.

The Commission wishes to point out that in the event that Ms. Zhang has continued concerns with respect to the condition of the Premises, there are avenues for her to pursue. For example, she could contact Environmental Health to have an inspection done of the Premises.

The Commission also notes that during the hearing of the appeal there was a significant amount of discussion regarding the presence of cockroaches and vermin in the unit. The Commission wishes to remind Ms. Zhang, and all landlords, that pursuant to Statutory Condition 6.1:

*The Lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.*

If there are reports of insects or vermin in the unit, the responsibility rests with the landlord to investigate and take steps to remediate the situation.

**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 in part, and while the termination of the rental agreement stands, the termination date is varied to 11:59 p.m. on June 30, 2022.

**DATED** at Charlottetown, Prince Edward Island, the 26<sup>th</sup> day of May, 2022.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

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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.