



**Docket: LR22045**

**Order: LR22-37**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Andrew Pollock and Barbara Power against Order LD22-208, issued by the Director of Residential Rental Property and dated June 21, 2022.

**BEFORE THE COMMISSION ON** Monday, July 11, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Thursday, July 7, 2022

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# ORDER

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(Sgd.) Susan Jefferson  
\_\_\_\_\_  
Commission Administrator  
Corporate Services and Appeals

This appeal asks the question of whether the Director of Residential Rental Property (the “Director”) erred in terminating a rental agreement and denying that an amount is due and owing to two tenants.

## **BACKGROUND**

Andrew Pollock (“Mr. Pollock”) and Barbara Power (“Ms. Power”) (collectively the “Tenants”) rent premises located at 31 MacAusland Drive, Apartment 4, Charlottetown, PE (the “Premises”), from Dale and Teresa Cook (the “Landlords”). Rent for the Premises is \$1,000 per month with rent due on the first day of the month. A security deposit of \$500 was paid.

On May 11, 2022, the Landlords served the Tenants with a Notice of Termination by Lessor of Rental Agreement (“Form 4”) which cited breaches of clauses 14(1)(a) and 14(1)(e) of the *Act*. The effective date of the Form 4 was June 11, 2022. On May 11, 2022, Ms. Power filed with the Director an application to set aside the Form 4.

On May 11, 2022, Ms. Power also filed with the Director an application requesting that an amount found to be owed be paid to the Tenants (“Form 2”).

In Order LD22-208 dated June 21, 2022, the Director denied the Tenants Form 2 application and ordered the Tenants to vacate the Premises by 11:59 p.m., June 27, 2022.

The Tenants appealed.

The appeal was heard by teleconference on July 7, 2022. The Tenants participated on their own behalf. The Landlords also participated and were represented by their counsel, Maggie Hughes.

## **Disposition**

The appeal is denied. Director’s Order LD22-208 is confirmed, subject to a variation in the date the Tenants are to vacate the Premises.

## **The Issue**

The Commission must decide whether the Director’s decisions ordering the termination of the rental agreement and denying the Tenants’ claim that an amount owing be paid are justified.

## **Analysis**

The Landlords are seeking to evict the Tenants on the basis of what can be generally described as disruptive and confrontational behaviour. The evidence establishes that the Tenants have had numerous negative interactions with other occupants in the building, particularly those in Apartment 2. It appears that these interactions primarily stem from the Tenants alleging the occupants of Apartment 2 create noise, which is impacting their quiet enjoyment. The Tenants have called police on several occasions with noise complaints. There have been episodes where the occupants of Apartment 2 have been confronted by the Tenants and report being fearful of them. The Tenants have taken photographs and videos of the occupants of Apartment 2, many of which were submitted into evidence. The Landlords’ evidence is that they have received threatening and intimidating messages from Mr. Pollock. The Landlords have also provided evidence that they have lost several good tenants in the building as a result of the disruptive behaviour of the Tenants.

On appeal, the Tenants did not directly address the allegations regarding their behaviour. Instead, they focused their submissions primarily on disputing the identity of the occupants of Apartment 2, and on their concerns with respect to the number of individuals living in Apartment 2. Neither of these elements are relevant to the matter under appeal. The Commission directly asked the Tenants to address the allegations regarding their behaviour, but they did not do so.

The Tenants' claim for return of rent stems from their belief that the Landlords did nothing to address their concerns about noise. The Tenants submitted numerous videos into evidence which purport to establish noise that is disruptive to their quiet enjoyment. The Commission finds that this video evidence fails to establish the Tenants' claim. Further, the evidence before the Commission is that the Landlords took steps to soundproof Apartment 2, and offered to soundproof the Tenants' apartment, but the Tenants declined. The Commission finds that the Landlords took all reasonable steps to address the Tenants' concerns regarding noise.

At the hearing it was revealed that the Tenants paid \$500 of their rent for the month of July. This payment was accepted by the Landlords.

The Commission therefore finds that there is no reason to disturb the findings of the Director in Order LD22-208, except for a variation in the date the Tenants are to vacate the premises to Friday July 15, 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 denied.
2. The rental agreement between the Landlords and the Tenants shall terminate at 11:59 p.m. on Friday, July 15, 2022. The Tenants and all occupants shall fully vacate the Premises by this time and date.
3. Director's Order LD22-208 is hereby confirmed in all remaining respects.
4. A certified copy of this Order, together with Order LD22-208, may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

**DATED** at Charlottetown, Prince Edward Island, Monday, July 11, 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.