



Docket: LR22054

Order: LR22-49

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Karl Ford against Order LD22-276 issued by the Director of Residential Rental Property and dated August 9, 2022.

BEFORE THE COMMISSION ON Wednesday, August 31, 2022.

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

Hearing Date: Thursday, August 25, 2022

ORDER

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Philip Rafuse,
Appeals Administrator,
Island Regulatory & Appeals Commission

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

Karl Ford (“the Landlord”) rents an apartment located at 653 Crooked Creek Road, Oyster Bed Bridge, PE (the “Premises”), to Daniel Mosher (“Mr. Mosher”). Rent for the Premises is \$826.60 per month.

On June 30, 2022, a representative of the Landlords served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) on Mr. Mosher, citing that they want possession of the Premises for “our daughter and granddaughter” pursuant to clause 15(1)(a) of the *Act*.

On July 13, 2022, Mr. Mosher filed with the Director an Application by Lessee to Set Aside Notice of Termination (“Form 6”).

In Order LD22-276 dated August 9, 2022, the Director ordered that the Form 4 was invalid and that the rental agreement continues to be in full force and effect.

The Landlord appealed.

The Commission heard the appeal on August 25, 2022, by way of telephone conference call. The Landlord appeared on his own behalf along with Becky MacLean (“Ms. MacLean”). Mr. Mosher appeared on his own behalf.

Disposition

The appeal is allowed. Order LD22-276 is reversed and the rental agreement is terminated, effective October 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]

The evidence before the Commission is that the Landlord and Ms. MacLean are common-law spouses commencing in 2003 through to the present. Ms. MacLean's daughter lived with the Landlord and Ms. MacLean for 13 years, representing a portion of her childhood and teenage years. The Landlord considers Ms. MacLean's daughter to be his step-daughter. Ms. MacLean is the Landlord's property manager and she and the Landlord consider themselves business partners as well as spouses.

Mr. Mosher took the position that the Landlord had other units available which were more suitable for his step-daughter and explained his reasoning in some detail, citing particular units.

Mr. Mosher at no time disputed the relationship between the Landlord and Ms. MacLean nor the step-daughter relationship between the Landlord and Ms. MacLean's daughter.

The onus is on the Landlord to establish that he, in good faith, wants possession of the Premises for occupation by Ms. MacLean's daughter.

The key issue is whether Ms. MacLean's daughter can be considered the Landlord's daughter within the meaning of clause 15(1)(a) of the Act.

Section 1(h) of the Act defines "lessor":

"lessor" means the owner or other person permitting the occupation, pursuant to a rental agreement, of residential premises and includes his heirs, assigns, personal representatives and successors in title;

The Commission also notes subsection 11(2) of the *Interpretation Act* (R.S.P.E.I. 1988, cap I-8.1) which reads:

Remedial construction

Acts and regulations shall be construed as being remedial and shall be given the fair, large and liberal interpretation that best ensures the attainment of their objects. 2021, c. 10, s. 11.

The Commission finds, based on the evidence, that it is a reasonable interpretation that Ms. MacLean falls under the definition of landlord. The Commission considers that an established and recognized step-child relationship is reasonably interpreted to be included within the term "children" in clause 15(1)(a) of the Act.

With respect to Mr. Mosher's comments that there are other more suitable units, the Act does not require a lessor to justify the selection of a particular unit other than acting in good faith. Just as Mr. Mosher testified as to why other units may be better suited, the Landlord and Ms. MacLean testified as to reasons why the Premises were the best unit for their daughter/step-daughter.

The Commission notes that it appears likely that the Director was not aware of the step-daughter relationship between Ms. MacLean's daughter and the Landlord.

Accordingly, the appeal is allowed and Director's Order LD22-276 is reversed. The rental agreement for the Premises is hereby terminated on October 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. Director's Order LD22-276 is reversed and the rental agreement for the Premises is hereby terminated on October 31, 2022 at 11:59 p.m.
3. A certified copy of this Order may be filed in the Supreme Court of Prince Edward Island and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, Wednesday, August 31, 2022.

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.