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**Docket: LR22060**

**Order: LR22-59**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Winston and Linda MacCormack against Order LD22-301 issued by the Director of Residential Rental Property and dated August 23, 2022.

**BEFORE THE COMMISSION ON** Friday, October 21, 2022.

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

Hearing Date: Wednesday, October 19, 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 invalid.

## Background

Winston and Linda MacCormack (“the Landlords”) rent premises located at 46 Valley Street, Summerside, PE (the “Premises”), to Conrad Black (“Mr. Black”). Rent for the Premises is \$535 per month due on the first day of the month.

On August 1 2022, the Landlords served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) on Mr. Black, citing that they want possession of the Premises for “my children” pursuant to clause 15(1)(a) of the *Act*. The effective date of the Form 4 was October 1, 2022.

On August 3, 2022, Mr. Black filed with the Director an Application by Lessee to Set Aside Notice of Termination (“Form 6”).

In Order LD22-301 dated August 23, 2022, the Director ordered that the Form 4 was invalid and that the rental agreement continues to be in full force and effect.

The Landlords appealed.

The Commission heard the appeal on October 19, 2022, by way of telephone conference call. The Landlords appeared on their own behalf along with Winston MacCormack, Linda MacCormack and Paul MacCormack. Mr. Black appeared on his own behalf.

## Disposition

The appeal is dismissed and Director’s Order LD22-301 is confirmed.

## 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]

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.*

Winston MacCormack and Paul MacCormack spoke at length with respect to the circumstances behind the termination request. The Commission notes the following:

- The Landlords originally wished to terminate the rental agreement so they could renovate the Premises and list it for sale. They own several rental properties and wish to reduce their holdings.
- The Landlord’s son, Paul MacCormack, was aware of his parents’ wishes and was interested in residing in the Premises. However, he did not express this interest at the time, indicating he thought he would wait until the Premises had been renovated before informing his parents of his interest in occupying the Premises.
- The Landlords became aware of the moratorium on ‘renovictions’, decided not to proceed with a termination for renovations and mentioned this to their son. Paul MacCormack then advised them he was interested in residing in the property.
- The Landlords then proceeded with an application to terminate the rental agreement pursuant to clause 15.(1)(a) of the *Act*.

Paul MacCormack testified as to his personal circumstances and his reasons for wanting possession of the Premises.

Mr. Black testified that he has lived in the Premises for 15 years. He stated that the Landlords had a vacant apartment which they could offer their son. He stated that he thought that the Landlords would have given him a “heads-up” earlier to give him time to find a new affordable home.

In response, Winston MacCormack stated that two years ago Mr. Black had complained about the Premises and he suggested that Mr. Black start looking for a more suitable home.

Paul MacCormack stated that the available apartment had no basement storage and, while the Premises are not big, it does have a full basement while the apartment has no basement storage. He explained that the Premises were a good fit for him as it was a

reasonable price and had storage space for his “stuff”. He stated that he has not been looking at any units owned by other landlords.

The Commission agrees with the Director that the Landlords have not established, on a balance of probabilities, that the termination is sought in good faith. Though evidence was presented as to Paul MacCormack’s desire to occupy the Premises, the fact remains that the Landlords’ idea to have their son move into the Premises only occurred after they realized they could not evict Mr. Black to renovate the Premises.

Accordingly, notwithstanding the testimony of Paul MacCormack and his written submission, the Commission agrees with the findings of the Director and confirms Order LD22-301.

**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 dismissed.
2. Director’s Order LD22-301 is confirmed.

**DATED** at Charlottetown, Prince Edward Island, Friday, October 21, 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.