



**Docket: LR22062**

**Order: LR22-60**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Peace Property Management, against Order LD22-296 issued by the Director of Residential Rental Property and dated August 18, 2022.

**BEFORE THE COMMISSION ON** Monday, October 24, 2022.

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

Hearing Date: Thursday, October 20, 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**

Peace Property Management (the “Landlord”) rents an apartment located at 16 Elena Court, Charlottetown, Cornwall PE (the “Premises”) to Jamie Butler (“Mr. Butler”). The rent for the Premises is \$1,550 per month and is due and payable on the first day of the month.

On July 30, 2022 a representative of the Landlord served Mr. Butler with a Notice of Termination by Lessor of Rental Agreement (the “Form 4”) for breach of clause 14(1)(a) of the *Act*. The effective date of the Form 4 was August 30, 2022. On August 3, 2022, Mr. Butler filed with the Director an Application by Lessee to Set Aside Notice of Termination (“Form 6”).

The matter was heard by the Director on August 17, 2022. In Order LD22-296 dated August 18, 2022, the Director found that the Form 4 was invalid.

The Landlord appealed.

The Commission heard the appeal by way of telephone conference call on October 20, 2022. The Landlord was represented by Thi Tuyet (Sunny) Tran (“Ms. Tran”). Eric Ellsworth (“Mr. Ellsworth”) testified for Ms. Tran. Mr. Butler also participated.

## **Disposition**

The appeal is dismissed and Director’s Order LD22-296 is confirmed.

## **The Issue**

Did the Director correctly determine that the Form 4 was invalid?

## **Analysis**

This dispute turns on the existence of a rental agreement between the parties and the terms upon which they agreed. Both parties have different accounts of that agreement.

The basis of Ms. Tran’s Form 4 application is due to the presence of Mr. Butler’s cat in the Premises. Ms. Tran’s position is that Schedule “D” to the rental agreement clearly prohibits pets in the building. Ms. Tran also stated that it was a condition of the agreement that Mr. Butler obtain tenant insurance prior to moving in. She testified that she gave two copies of the agreement to Mr. Butler, who said he would review it and give it back to her, but that he did not ever provide her with an executed copy.

Under questioning from the panel, Mr. Butler stated that on February 28, 2022 he met with Ms. Tran in the kitchen of the Premises. Mr. Butler’s mother was present as well in order to pay the security deposit and first month’s rent with her credit card. Mr. Butler stated

that Ms. Tran had just one copy of the rental agreement, which she took with her when she left, and that she did not ever provide him with a copy for his records. He stated that there was no discussion with Ms. Tran about a Schedule “D” to the rental agreement.

Mr. Ellsworth testified that he helped Ms. Tran put the business together and that a requirement for tenant’s insurance and no pets were part of the rental agreement. Mr. Ellsworth stated that Ms. Tran left the rental agreement with Mr. Butler to sign, but under questioning from the panel, Mr. Ellsworth acknowledged that he was not present when Ms. Tran and Mr. Butler met to review the rental agreement.

Mr. Butler testified that the first he heard that tenant’s insurance was required was after the hearing before the Director; indeed, Ms. Tran stated in her Notice of Appeal that she asked Mr. Butler to obtain tenant insurance following the hearing before the Director.

Mr. Butler stated that the rental agreement eventually provided (Exhibit E-6, see page 11 to 15 of the file documents) was a document that Ms. Tran printed up and signed herself. He stated that Ms. Tran added extra provisions and “took away my parking spot”. Under questioning from the panel, Mr. Butler stated that Ms. Tran did not discuss Schedule “D” of the rental agreement with him, nor did she discuss a no pet policy.

In Order LD22-296 the Director stated in paragraph 17:

*Based upon the evidence presented, it does not appear that the Landlord served the Tenant with a fully executed copy of the rental agreement as of July 30, 2022. As a result, pursuant to subsection 30.(2) of the Act, the Tenant was not bound by the additional term regarding "no pets" at the time the Notice was served. Therefore, the Landlord has not established a breach of the rental agreement regarding a cat living in the Premises as of July 30, 2022. The Officer finds that the Notice is invalid.*

The Commission agrees with the Director’s finding, and notes that the same reasoning applies to the additional term requiring tenant’s insurance.

The Commission notes that Ms. Tran asserts that Mr. Butler had been given a copy of the rental agreement but failed to sign and return it. Mr. Butler disputes that account. It appears that Ms. Tran ultimately provided Exhibit E-6 to Mr. Butler and Mr. Butler annotated this document in handwriting.

The Commission cannot give Exhibit E-6 much weight. The Premises material to this appeal is Apartment 101. Exhibit E-6 describes the premises as:

*16 Elena Court, Apt #206 AND 105. (From June 15 to June 30 at apt 206 and from July st to June 30 2022 at Apt: 105)*

Exhibit E-6 is signed by someone for the lessor, perhaps Ms. Tran. There is no lessee signature, no witness signature and Schedule D is not initialed as required by the text of the rental agreement. The Commission cannot therefore rely on Exhibit E-6 as evidence of the terms of the rental agreement between the Landlord and Mr. Butler.

The onus is on a lessor, here the operator of a 36-unit apartment building, to establish the terms of the rental agreement in a professional and consistent manner.

While Mr. Ellsworth appears to be sincere and his observations may reflect the Landlord's general policy, he was not present when Ms. Tran and Mr. Butler reviewed the rental agreement.

For these reasons, the Commission dismisses the appeal and confirms Director's Order LD22-296.

**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 LD22-296 is confirmed.

**DATED** at Charlottetown, Prince Edward Island, on Monday, the 24<sup>th</sup> day of October, 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.