



Docket: LR22063

Order: LR22-61

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Charles Murphy against Order LD22-303 issued by the Director of Residential Rental Property and dated August 25, 2022.

BEFORE THE COMMISSION ON Monday, October 24, 2022.

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

Hearing Date: Friday, October 21, 2022

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

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

Charles Murphy (“Mr. Murphy”) rents premises located at 13 MacArthur Drive, Charlottetown, PE (the “Premises”), to Yan Lu (“Mr. Lu”). Rent for the Premises is \$1700 per month due on the first day of the month.

On July 20, 2022, a representative of the Landlord served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) on Mr. Lu, citing that Mr. Murphy wants possession of the Premises for himself pursuant to clause 15(1)(a) of the *Act*. The effective date of the Form 4 was September 20, 2022.

On July 20, 2022, Mr. Lu 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 24, 2022 and in Order LD22-303 dated August 25, 2022, the Director ordered that the Form 4 was invalid and that the rental agreement continues to be in full force and effect.

Mr. Murphy appealed.

The Commission heard the appeal on October 21, 2022, by way of telephone conference call. Mr. Murphy appeared on his own behalf along with Aldo DiBacco. Mr. Lu appeared on his own behalf.

Disposition

The appeal is dismissed and Director’s Order LD22-303 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.

Most of the file documents and much of the oral testimony dealt with background issues not pertaining to the clause 15.(1)(a) application set out in the Form 4.

The test under a clause 15.(1)(a) application is whether the lessor is acting in good faith. There is very little evidence of Mr. Murphy’s plans to re-occupy the Premises while there is overwhelming evidence of an ongoing dispute between the parties.

The Commission finds that Mr. Murphy has not satisfied that he, in good faith, seeks to occupy the Premises. Accordingly, the Commission agrees with the Director, dismisses the appeal and confirms Order LD22-303.

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 LD22-303 is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, on Monday, October 24, 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.