



Docket: LR22064
Order: LR22-67

IN THE MATTER of an appeal, under Section 25 of the ***Rental of Residential Property Act*** (the "**Act**"), filed by Judith Cluney, Bruce Cluney and Prosperimed Financial Group, against Order LD22-308 issued by the Director of Residential Rental Property and dated September 2, 2022.

BEFORE THE COMMISSION ON Monday,
December 12, 2022.

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

Hearing Date: Wednesday, November 16, 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 Office of the Director of Residential Rental Property (the “Director”) erred in finding that an eviction notice was valid in circumstances where the rental agreement coexisted with a rent to own agreement.

BACKGROUND

On September 15, 2022, the Commission received a Notice of Appeal from lessees Judith Cluney, Bruce Cluney and Prosperimed Financial Group (the “Appellants”), requesting an appeal of Order LD22-308 dated September 2, 2022 issued by the Director.

On June 29, 2022, the Appellants filed application to set aside a June 20, 2022 notice of termination with respect to the residential premises at 493 York Point Road in Cornwall, PEI (“the main house”). This matter was termed the “Cluney Notice” and the “Cluney Application” by the Director.

On July 12, 2022 the lessor, J.B. Read Marketing Inc. (the “Respondent”) filed with the Director an application seeking an order that possession of the residential premises at 493A York Point Road (“the sub-unit”) be surrendered to the Respondent and directing the Sherriff to put the Respondent in possession. This application was based on a termination notice dated May 18, 2022. This matter was termed the “Prosperimed Notice” and the “Prosperimed Application” by the Director.

The matter was heard by the Director on August 12, 2022 . In Order LD22-308, issued on September 2, 2022, the Director ordered:

“IT IS THEREFORE ORDERED THAT:

- A. The rental agreement between the Landlord and the Cluneys shall terminate at 11:59 p.m. on September 15, 2022. The Tenant shall vacate the Premises by this time and date.*
- B. The rental agreement between the Landlord and Prosperimed shall terminate at 11:59 p.m. on September 15, 2022. The Tenant and/or its assigns/representatives shall vacate the Premises by this time and date.*
- C. A certified copy of this order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.*

The matter was heard by the Commission on November 16, 2022 by way of telephone conference call. The Appellant Judith Cluney (“Ms. Cluney”) was present and was represented by her counsel, Thomas Keeler and Abigail Smith. Jim and Lowleen Read participated on behalf of the Respondent, and were represented by counsel Ryan MacDonald, and articled clerk Madison Ranta.

Disposition

The appeal is dismissed and Director’s Order LD22-308 is confirmed.

The Issues

Did the Director correctly terminate that the rental agreements for both the main house and the sub-unit were to be terminated?

Analysis

At the commencement of the hearing, Mr. Keeler withdrew the jurisdictional argument that he had set out in the Notice of Appeal. As such, the finding in Order LD22-308 that the Director has jurisdiction over the rental agreement, despite the existence of an option to purchase between the parties, was not in issue before the Commission. The Commission nevertheless agrees with the finding of the Director in Order LD22-308 in respect of the jurisdictional issue on the facts of this case.

The pith and substance of Mr. Keeler's remaining arguments were that the rental agreement combined with the purchase agreement contemplated a relationship of banker and homeowner, and as such, the Appellants made an honest and mistaken belief in taking full responsibility for repairs to the main house and sub unit and resisting the Respondent's access to the property.

Mr. Keeler also submitted that evictions should not be approached lightly and there was an insufficient evidentiary basis to support an eviction. Mr. Keeler noted that the matter of habitual late rent was not raised before the Director.

Mr. Keeler submitted that the agreement was confusing and the Appellants are no longer barring the Respondent from access to the main house or the sub-unit.

Ms. Cluney testified that the Appellants were under the impression that it was appropriate to refuse access as Mr. Read had suggested in an email that the Respondents were responsible for painting and repair of items within the home. She further testified that the relationship between the parties was good from the start of the agreement in September 2019 until July 2021.

Mr. MacDonald submitted that a previous order issued by the Director on November 16, 2021 (Order LD21-433) made it clear that the Appellants were to permit the Respondent to access the property. Mr. MacDonald submitted that the Appellants did not abide by the requirements of Order LD21-433. As such, Mr. MacDonald submitted that Director's Order LD22-308 is correct and Respondents no longer have a right to retain possession.

The Commission finds that, with respect to the Prosperimed Notice and Application, no Form 6 set aside application was filed and thus the Appellants are deemed to have accepted the May 18, 2022 notice of termination relating to the sub-unit.

With respect to the Cluney Notice and Application, while the agreement was poorly written and confusing, Director's Order LD21-433 effectively confirmed the nature of the relationship between the parties was that of lessor and lessee. Order LD21-433 was not appealed and remains in full force and effect. The evidence before the commission confirms that, though the Appellants did permit an inspection of the premises to occur as ordered in LD21-433, they nevertheless reverted to restricting the Respondent from

accessing the premises. As such, the Commission agrees that Appellants violated clause 14(1)(e) of the Act.

With respect to the allegation of habitual late payment of rent; that matter was not before the Director and thus cannot be considered on appeal.

Accordingly, the Commission agrees with the reasoning and findings contained in Director's Order LD22-308 and thus confirms said Order.

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. Director's Order LD22-308 is confirmed.

DATED at Charlottetown, Prince Edward Island, **Monday, December 12, 2022.**

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell,
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Sections 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.