



Docket: LR23029

Order: LR23-20

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by 479021 BC Ltd., against Order LD23-136 issued by the Director of Residential Rental Property and dated April 13, 2023.

BEFORE THE COMMISSION ON Wednesday, June 7, 2022.

Panel Chair – J. Scott MacKenzie, K.C., Chair
M. Douglas Clow, Vice-Chair

Hearing Date: Monday, June 5, 2023

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

479021 BC Ltd. (the “Landlord”) rents a mobile home located at 2 Power Street, Montague, PE (the “Home”) to Marlee Clark (“Ms. Clark”). The rent for the Home is \$750 per month and is due and payable on the first day of the month.

On March 17, 2023 a representative of the Landlord served Ms. Clark with a termination notice (the “March 17, 2023 Notice”) for breach of subsection 14.(1)(e) of the *Act*. The effective date of the March 17, 2023 Notice was April 30, 2022.

On March 20, 2023, Ms. Clark filed with the Director a set aside application (the “Application”).

The matter was heard by the Director on April 5, 2023. In Order LD23-136 dated April 13, 2023, the Director found that a “First Notice and Second Notice” were invalid, the Application was valid, and ordered that the rental agreement between the parties continue in full force and effect.

The Landlord appealed.

The Commission heard the appeal by way of telephone conference call on June 5, 2023. The Landlord was represented by Henk Van Duiven (“Mr. Van Duiven”). Ms. Clark also participated along with her mother Paula Clark.

Disposition

The appeal is dismissed and Director’s Order LD23-136 is confirmed, subject to the revision that the only applicable Notice is the March 17, 2023 Notice.

The Issue

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

Analysis

Mr. Van Duiven testified that he had received complaints with respect to the appearance of the outside of the Home. He also stated that persons other than Ms. Clark and her son were living in the Home, contrary to ‘park rules’. He testified he owns the Home and rents a lot from the mobile home park owner. He stated that the mobile home park owner served a March 10, 2023 Form 4 Notice on him and that he served the March 17, 2023 Notice on Ms. Clark.

Ms. Clark testified that her mother Paula Clark and her step-father had been staying with her; however, they no longer live there and now only visit for “10 days or less” which apparently is in conformity with the park rules. Ms. Clark stated that the outside is now tidy and she has received no complaints from neighbours.

The Commission notes that much was made of an alleged violation of 'park rules'; however, these rules were not in evidence before the Commission. Therefore, the Commission makes no findings with respect to any park rules.

The Commission finds that the Director believed that the March 10, 2023 Notice was issued to Ms. Clark; however, a careful review indicates that Notice was issued to Mr. Van Duiven from Riley Cameron, a representative of the owner of the mobile home park. Accordingly, the Commission finds that this Notice does not apply to Ms. Clark.

The March 17, 2023 Notice was issued to Ms. Clark and alleges s.14(1)(e) of the *Act*, an act or omission that seriously impairs the safety or lawful right of the landlord or other lessees. The particulars of that Notice referenced allowing "others to live with you for extended periods of time" and also stated that "The owners of the park have now given us notice of eviction".

In an eviction under s.14(1)(e) of the *Act*, the onus is on a landlord to justify that the conduct of a lessee, or someone permitted on the premises by the lessee, warrants the eviction. There is past evidence that the outside of the Home was untidy and that Ms. Clark's immediate family had been staying with her for extended periods of time. Ms. Clark has testified that the outside of the Home is now tidy and her family only visits for 10 days or less. There is no evidence, current or past, of an impairment of the safety or lawful right of the Landlord or other tenants.

Ms. Clark testified that the outside of the Home is now tidy and she acknowledged that the Home must be kept in a tidy condition. If Ms. Clark does not keep the outside of the home tidy, she could be in jeopardy of receiving another eviction notice.

Accordingly, the Commission dismisses the appeal and confirms Director's Order LD23-136, subject to the revision that the only applicable Notice is the March 17, 2023 Notice.

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 LD23-136 is confirmed, subject to a revision that the only applicable Notice is the March 17, 2023 Form 4.

DATED at Charlottetown, Prince Edward Island, on Wednesday, the 7th day of June, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie, K.C.)

Panel Chair – J. Scott MacKenzie, K.C.,
Chair

(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.