



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21002
Order LR21-06**

IN THE MATTER of an appeal filed under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* (the "Act") by 101619 P.E.I. Inc. against Order LD21-012 dated January 14, 2021, issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 5th day of March, 2021.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* (the "Act") by 101619 P.E.I. Inc. against Order LD21-012 dated January 14, 2021, issued by the Office of the Director of Residential Rental Property.

Order

The Commission is asked to determine, on the particular facts of this case, whether the Appellant landlord may, on appeal, attempt to justify the eviction of a tenant to renovate a rental unit with evidence not previously presented to the Director.

Background

By way of summary, the Appellant, Mark Landrigan ("Landrigan"), on behalf of 101619 P.E.I. Inc. (the "Landlord") and the Respondent, Roy MacDonald ("MacDonald"), are parties to a month-to-month rental agreement for the premises located at 18 Karla Court, Apartment #1, in Cornwall (the "Premises"). They agreed that the rent for the Premises would be \$558.00 per month.

On December 4, 2020, Landrigan served MacDonald with a Form 4 - Notice of Termination by Lessor of Rental Agreement with an effective date of February 4, 2021 (the "Form 4"). The reason for serving the Form 4 was that the Landlord decided to renovate the Premises and the renovations could not be carried out while MacDonald occupied the Premises. On December 10, 2020, MacDonald filed with the Director of Residential Rental Property (the "Director") an Application by Lessee to Set Aside the Notice of Termination (the "Set Aside Application").

In Order LD21-012 the Director allowed the Set Aside Application and held that the rental agreement continued in full force and effect. The Director found that the Landlord had not provided sufficient evidence to establish that the Landlord was acting in good faith, nor that MacDonald could not remain in the Premises while the work was ongoing.

The Commission heard the appeal on February 19, 2021, via telephone conference call. The Landlord was represented by legal counsel Andrew MacDonald ("Counsel"). MacDonald also participated by telephone conference call and made submissions on his own behalf.

The Issue

The Landlord raised a number of criticisms of Order #LD21-012, but acknowledged that the facts contained therein were not being contested. Counsel for the Landlord agreed that the original Form 4 served by Landrigan

did not attach a proper Appendix “A” describing the nature of the renovations, as prescribed by regulation, but submitted that its absence was not fatal to the Form 4.

Counsel for the Landlord submitted additional evidence on appeal that wasn't available to the Director at the original hearing. The evidence, in the form of a Contractor's Quote and statement of Planned Renovations, post-dated the hearing before the Director.

The issue for the Commission's consideration is whether a Director's Order may be overturned where the bulk of the supporting evidence provided to the Commission on appeal was not previously available to the Director.

Analysis

In Counsel for the Landlord's written submissions (Exhibit E-15) filed with the Commission, he stated at Tab 2, paragraph 6 (on page 43 of the document record):

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6. The Order authored by Rental Officer Burke contains an error of law in Analysis in paragraph 10 and an unacceptably vague generality (bordering on an error of law) in paragraph 11. The Officer's analysis is not rooted in the requirements of the Act and is therefore unenforceable.

Counsel alleged that the Director did not make appropriate findings based on the applicable law. Specifically, he argued that the Director made an error by concluding, at paragraph 10, that the Landlord “did not give sufficient justification or reason why the Premises need to be renovated at this specific time”. He argued that as there is no “need to renovate” test set out in the Act, and as such, the Order should be reversed.

Counsel further argued that the “nature of the renovations” had been adequately provided to MacDonald on the Form 4, and that the absence of an Appendix A was not grounds to undermine the validity of the Form 4.

Counsel, through the Landlord's representative Landrigan, went on to provide to the Commission a description of the particulars of the planned renovations.

In Tab 5 of Counsel's submissions, a contractor's quote dated February 5, 2021 is provided. In Tab 6, a description of the planned renovations is provided. Neither document was filed with the Director.

In Order LR21-04, the Commission considered the nature of an appeal to the Commission under the *Rental of Residential Property Act* (the “Act”):

Nature of the Appeal

Subsection 26(1) of the Rental of Residential Property Act states that:

[a]n appeal to the Commission shall be by way of a re-hearing, and the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit and make such decision or order as the Director is authorized to make under this Act.

It is important to distinguish an appeal by way of “re-hearing” from an appeal “de novo”, which is generally considered a brand new hearing. As explained by Justice Bastarache in his dissenting judgment in H.L. v. Canada, 2005 SCC 25 (CanLII) (see paras. 173-179), an appeal by way of rehearing does not involve a completely fresh hearing. Instead, the Court “proceeds on the basis of the record and any fresh evidence that, exceptionally, it admits”. The Commission adopts this interpretation of “re-hearing”.

While the Commission may accept additional evidence on appeal that was not before the Director, the Commission is mindful that such evidence should be only supplementary to evidence already presented to the Director. That is to say, such evidence may serve to clarify and update substantial evidence already before the Director.

Clause 15(1)(c) of the Act reads:

15. Personal use, renovations, etc.

(1) Where the lessor in good faith seeks to

...

(c) renovate the premises where the nature of the renovations are advised to the lessee and are such that the renovations cannot be carried out while the lessee occupies 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.

The Commission is free to exercise its discretion to exclude evidence filed on appeal that ought to have been previously filed in making a party's case before the Director. The Director is called upon to determine whether the proposed renovations are “such that the renovations cannot be carried out while the lessee occupies the premises”. The Director cannot uphold a termination under clause 15(1)(c) where evidence in support of a termination is lacking.

In the present appeal, it is reasonable for a landlord to present a contractor's quote and a fairly detailed description of the work to be done to the Director prior to, or at the time of, the original hearing so that the Director can fairly assess whether or not a termination of the rental agreement is needed in order to carry out the renovations. Evidence filed on appeal is not to be used as a remedy for a lack of evidence presented to the Director.

While Counsel argued error of law and “borderline” error of law on the part of the Director, the Commission determines that the findings of the Director were reasonable given the limited evidence the landlord had presented.

Decision

For these reasons, the Commission dismisses the appeal.

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. Order LD21-012 is confirmed.

DATED at Charlottetown, Prince Edward Island, this 5th day of March, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

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* provide 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.