

File #1084-01

The Prince Edward Island Human Rights Commission

BETWEEN:

JENNIFER JAY

COMPLAINANT

AND:

ROYALTY HOLDINGS LTD.

RESPONDENT

DECISION

Hearing Date: November 5, 2002

**Panel Member
George S. Kells - Commissioner
Prince Edward Island Human Rights Commission
PO Box 2000
Charlottetown PE C1A 7N8
(902)368-4180**

CASES CITED

Hsuen et al v. Mah (1986), 31 D.L.R. (4th) 199, BC Supreme Court

LEGISLATION CITED

Prince Edward Island Human Rights Act, R.S.P.E.I. 1988, Cap. H-12 - Sections 1(d), 3, 14(2), 22(3) and (4), 27, 28.1, 28.4(1)(b), 28(3), 28 (4), 28(5) and 33

Canadian Charter of Rights and Freedoms - Sections 15(1) and 24(1)

THE COMPLAINT

1. On July 11, 2001, Ms. Jay telephoned Royalty Holdings seeking temporary accommodation. She alleges that the person to whom she spoke informed her that the building at 44 Beach Grove Road would not be available to her family because it was, in effect, “adults only”.
2. The Respondent admits that the conversation took place but that the Complainant was turned down because the company did not do short-term rentals.
3. On July 13, 2001, the Complainant submitted a complaint alleging discrimination based on age.
4. Subsequent efforts by the Executive Director failed to accomplish a settlement and a panel hearing was directed by the Chair of the Prince Edward Island Human Rights Commission. This panel sat on November 5, 2002.
5. In his opening statement for the Respondent, Mr. Zia Chishti, raised the question of bias of the Executive Director in that he failed to carry out a thorough investigation and to dismiss the complaint as lacking merit.

6. The Panel stated that he would rule on this matter after he had heard opening statement by the Executive Director.
7. Mr. Chishti further alleged that because two letters (Tabs 1 and 2 of the Respondent's Record) had been omitted from the Record of the complainant that the complaint had been prejudged.
8. He also submitted a letter from a previous tenant and asked that it be taken into evidence.
9. In his opening statement, the Executive Director responded to the allegation of bias by outlining his duties as directed by the Prince Edward Island Human Rights Act and Commission Policies.
10. The Executive Director consented to the Respondent's request to add the three letters above to the Record (marked as Tabs 12, 13 and 14).
11. The Executive Director requested that the original complaint be amended to include "family status" as a ground for complaint in addition to "age".
12. The Respondent objected to this addition and the Panel directed that he would rule on this objection after he had heard the evidence.
13. Respondent objected to this decision on the basis that the Prince Edward Island Human Rights Act did not list family status as a ground of discrimination.
14. The Panel ruled that there was no evidence to support the allegation of bias of the Executive Director and that the Panel would proceed. Respondent objected to this ruling and requested Panel's ruling in writing. Panel's ruling is attached as Appendix 'A'

REVIEW OF THE EVIDENCE

15. Jennifer Jay in her sworn testimony reaffirmed her statement contained in the complaint.
16. She added that she was not seeking any compensation but rather sought to right what she perceived as a wrong.
17. Her explanation as to why her complaint form sought compensation was that this was inserted on the advice of staff at the Human Rights Commission who assisted her in completing the form.
18. In spite of repeated questioning she stuck to her version of events (She maintained that there had been no discussion of temporary accommodation and that, as soon as she indicated that she has a young child she was informed that children were not allowed at 44 Beach Grove Road. She was then offered an apartment in other buildings managed by the Respondent).
19. She further stated that she had forfeited one days pay in order to attend this panel hearing.
20. Mr. Badrul H. Chishti, Manager of Royalty Holdings, appeared as witness for the Respondent. He stated that he recalled the telephone conversation of July 9, 2001, with the Complainant. However, his recollection was that Ms. Jay was denied accommodation because she wished only temporary accommodation and that they did not rent in 44 Beach Grove Road for periods of less than one year nor less than six months in their other buildings.
21. He claimed that Royalty Holdings does rent to families at 44 Beach Grove Road.

As proof he offered the letter at Tab 14. This indicated that a child was born to a couple while in residence there and that they had voluntarily moved out shortly afterward.

22. On further questioning, he admitted that there are currently no children in this building and there have not been since 1996.
23. He testified that this building and the others managed by Royalty Holdings are owned by Concept 90 Ltd.
24. He also explained the prohibition against temporary rentals in the company policies.
25. He further stated that current residents would object to allowing larger families in this building and that children may cause an annoyance to long-term tenants.

SUMMATION

26. In his summation, the Respondent argued for dismissal of the complaint on the basis that prohibition of children at 44 Beach Grove Road is a genuine qualification for the protection of tenants in accordance with Section 4(1)(d) and Section 14(2) of the Prince Edward Island Human Rights Act.
27. Further he cited the British Columbia case which upheld the right of a landlord to discriminate on the basis of age.
28. He again raised objection to including “family status” in the complaint.
29. It became evident that the Respondent was quoting an older version of the Act which, in subsequent amendments, incorporated “family status” as a basis of discrimination.

30. The Panel subsequently ruled that “family status” could be added as a basis in this complaint as it more clearly denotes the events in this case.

DETERMINATION

31. Whereas the evidence of the two witnesses varies as to the detail of what was said, it left little doubt that the issue boiled down to the question of allowing families with children to occupy accommodation at 44 Beach Grove Road.
32. In essence, the Complainant stated that her request was refused when she declared that she had a child.
33. The Respondent on the other hand did not recall discussing the issue of children but his subsequent testimony attempted to justify prohibition of families with children as a genuine qualification as covered in Section 14(1)(d) and Section 14(2) of the Act.
34. The Respondent’s letter of August 10, 2001, (Tab 3) provides confirmation of a clear intent to discriminate: (“Rented out to elderly retired couples and mature single couples” and “ensure peace and quiet . . . and not like to annoy long-term tenants”).
35. Whereas the BC Supreme Court did in fact uphold the right of a landlord to discriminate on the basis of “age”, it did so largely because the BC Human Rights Act at the time did not include “age” as grounds for discrimination in accommodation matters. The Court determined that, whereas “age” was listed as grounds for discrimination in other sections of the Act, it must have been deliberately omitted by the legislature in the case of accommodation. The Court

deferred to the legislature in this instance.

36. It is clear that the Prince Edward Island Human Rights Act makes no such omission and includes both “age” and “family status” as grounds for discrimination in rental housing.
37. The Respondent has provided no grounds to establish that a “genuine qualification” exists which would allow him to discriminate against families with children any more than it would allow discrimination against racial minorities, persons with disabilities, gays or lesbians, or any other group protected by the Human Rights Act. Customer preference (i.e. - The preferences of other tenants) does not justify discrimination).

DECISION

I conclude that Ms. Jay has been discriminated against by Royalty Holdings as property manager for Concept 90 Ltd.

I direct that the Respondent:

1. Provide a suitable letter of apology to Ms. Jay;
2. Refrain in future from discriminating against families with children at 44 Beach Grove Road; and
3. Provide the Complainant with a payment of \$500.00 for hurt and humiliation.

Dated this 20th day of December, 2002

**George S. Kells
Human Rights Commissioner**

TO: Zia Chishti, Counsel for the Respondent
500 Queen Street
Charlottetown PE C1A 8K9

AND TO: Gregory J. Howard, Executive Director
PEI Human Rights Commission
PO Box 2000
Charlottetown PE C1A 7N8

AND TO: Jennifer Jay
5 Arcona Drive
Charlottetown PE C1A 8C9

PRELIMINARY ISSUES

Subject

On the question of apprehension of bias of the Executive Director against the Respondent. As a preliminary to the Panel hearing of November 5, 2002, the Respondent raised the accusation that Mr. Greg Howard, Executive Director of the Prince Edward Island Human Rights Commission was biased against the Respondent and that the proceedings of the Panel were therefore tainted. As evidence he presented a letter from Mr. Howard dated November 26, 2001 (Tab 12). This letter, in effect, stated that the complaint had merit and attempted to reach a settlement. In his argument, the Respondent stated that had Mr. Howard carried out a thorough investigation, he would have dismissed the complaint thus negating the need for a settlement and the subsequent panel hearing. Because no such dismissal was forthcoming, the Respondent considered that the Commission had prejudged the complaint and that Mr. Howard had displayed bias towards the Respondent.

Determination/Reasons

Prince Edward Island Human Rights Act Sections 22(3), 22(4), 27 and 28(1) clearly direct the duties of the Executive Director. Their application to this case may be summarized as follows: investigate, determine the merits of the complaint, attempt to achieve a settlement, report to the Chair if no settlement can be reached and have carriage of the complaint before a panel. I find that Mr. Howard carried out these duties exactly as directed by the Act. To argue that failure to dismiss indicates bias implies that all Human Rights Panels would be tainted and indeed that the Act itself becomes toothless.

Decision

I find no evidence of bias and will proceed with the Panel as constituted.