



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR06015
Order LR06-14**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Marie Best against Order LD06-289 of the Director of Residential Rental Property, dated November 9, 2006.

BEFORE THE COMMISSION

on Wednesday, the 13th day of December, 2006.

Weston Rose, Commissioner
Norman Gallant, Commissioner
Kathy Kennedy, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Marie Best against Order LD06-289 of the Director of Residential Rental Property, dated November 9, 2006.

Participants

1. **Appellant:** Not present at the hearing

2. **Respondent:** Gary McLaine
Jane McLaine

Reasons for Order

1. Introduction

Marie Best (the Appellant) has appealed Order LD06-289 (Exhibit E-6) issued by the Office of the Director of Residential Rental Property (the Director) on November 9, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-9) on November 30, 2006.

On October 21, 2006, Gary McLaine (the Respondent) filed a Notice of Termination by Lessor of Rental Agreement (Form 4) with the Director.

The Director's Order and the present appeal concern the matter of an Application by Lessor for Earlier Termination (Form 5) dated October 27, 2006 concerning the residential premises located at 52 Bayfield Street (the residence).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Tuesday, December 12, 2006.

2. Background

In Order LD06-289 the Office of the Director noted in part:

*The Residential Rental Property Officer notes that the lessee [Appellant] has not availed herself of Section 16 of the **Act** to make application to the Director to set aside the Notice of Termination. Therefore, the Form 4 has been deemed accepted by the lessee.*

*According to the evidence provided, the Residential Rental Property Officer determines that the lessee has not fulfilled her responsibility for ordinary cleanliness of the premises and has breached the provisions of statutory condition 4 of the **Act**.*

The Residential Rental Property Officer accepts the lessor's [Respondent's] arguments that the pictures of the cigarette butts on the carpet in the lessee's bedroom demonstrate that there is concern for the safety of the lessee and other occupants of the rental complex. The lessor has substantiated his claim with pictures as well as with the testimonial letters that the lessee has damaged the rental unit and that the damage is beyond normal wear-and-tear.

Based on the evidence presented, the Residential Rental Property Officer determines that the lessor has also substantiated his claim that the rental agreement should be terminated at an earlier date than November 30, 2006 as set out on Form 4 and approves his request that the termination date be effective Friday, 12:00 noon, November 10, 2006.

In the Appellant's Notice of Appeal, the Appellant states the following reasons for her appeal:

It is my opinion that I was not given adequate opportunity to access my belongings in the apartment & to appropriately make alternative arrangements for same. I disagree with with [sic] evidence documented in the Order and I want to clarify some information around this.

3. Decision

The Commission denies this appeal for the reasons that follow.

The Commission notes that the Appellant had expressed her disagreement with the evidence referred to in Order LD06-289 and she wished to clarify some information. The Appellant personally signed her Notice of Appeal. However, the Appellant did not appear at the hearing before the Commission.

At the hearing, Commission staff advised the Commission of the process used to serve the Appellant with the Notice of Appeal Hearing. This Notice states in part:

AND FURTHER TAKE NOTICE THAT:

- a) Any material which relate to the subject matter of the appeal and on which you intend to rely (i.e. copies of leases, letters, receipts, cheques, ledgers or other documents and any witnesses) should be presented at the hearing.*
- b) A postponement may only be granted by the Commission. Such a request may be presented to the Commission at the scheduled hearing time.*

- c) *If you do not attend or have a representative appear on your behalf, the Commission may proceed in your absence.*
- d) *Unless otherwise indicated, all materials submitted and Orders of the Commission will be made public.*

The Commission finds that the Appellant was properly served with the Notice of Appeal Hearing document and enclosed Proposed Exhibit List. In this case, Commission staff stated on the record that she was advised by a nurse caring for the Appellant that the documentation was presented to the Appellant. Commission staff was also advised by this nurse that the Appellant's daughter was informed that documents were presented to the Appellant.

The Commission notes that the reasons for the Appellant's appeal would require evidence or information from or on behalf of the Appellant. Neither the Appellant nor a representative on her behalf appeared before the Commission. No affidavits, or even ordinary letters, were provided on behalf of the Appellant to advance the merits of her case on appeal. No request for a postponement was made by, or on behalf of, the Appellant.

As neither the Appellant nor a representative on her behalf attended the hearing or requested a postponement of the hearing, and the Appellant's reasons for appeal were premised on the Appellant's disagreement with the evidence and desire to clarify some information, the Commission finds that the Appellant has abandoned her appeal. Accordingly, this appeal is denied.

As a result of the denial of this appeal, all the requirements of Order LD06-289 issued by the Director on November 9, 2006 continue to apply. For greater certainty, the Commission notes that Order LD06-289 ordered that the rental agreement between the Respondent and the Appellant be terminated as of Friday, November 10, 2006 at 12:00 noon. Order LD06-289 also required the Appellant to have vacated the residence on or before said date and time.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Marie Best against Order LD06-289 of the Director of Residential Rental Property, dated November 9, 2006.

Order

WHEREAS Marie Best (the Appellant) has appealed against Order LD06-289 of the Director of Residential Rental Property, dated November 9, 2006;

AND WHEREAS the Commission heard the appeal in Charlottetown on December 12, 2006;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. The appeal is denied.
2. For greater certainty, all requirements of Order LD06-289 issued by the Director on November 9, 2006, and the enforcement provisions contained in said Order, continue to apply.

DATED at Charlottetown, Prince Edward Island, this 13th day of December, 2006.

BY THE COMMISSION:

Weston Rose, Commissioner

Norman Gallant, Commissioner

Kathy Kennedy, Commissioner

NOTICE

Sections 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.

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