



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

**Docket LR08-008
Order LR08-08**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Gordon Gallant against Order No. LD08-214 of the Director of Residential Rental Property, dated May 23, 2008.

BEFORE THE COMMISSION
on Wednesday, the 16th day of July, 2008.

John Broderick, Commissioner
Maurice Rodgeron, Chair
David Holmes, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Gordon Gallant against Order No. LD08-214 of the Director of Residential Rental Property, dated May 23, 2008.

Participants

1. **Appellant:** Gordon Gallant
Represented by Len Arnold
2. **Respondent:** PEI Housing Corporation – Seniors Housing Division
Represented by Chris Reeves

Reasons for Order

1. Introduction

The Appellant Gordon Gallant (Mr. Gallant) has appealed Order No. LD08-214 issued by the Office of the Director of Residential Rental Property (the Director) on May 23, 2008. The Island Regulatory and Appeals Commission (the Commission) received Mr. Gallant's Notice of Appeal (Exhibit E-5) on May 27, 2008.

The Respondent PEI Housing Corporation (the Corporation) served a Notice of Termination by Lessor of Rental Agreement (Form 4) on Mr. Gallant on April 3, 2008. According to the Form 4, Mr. Gallant was to vacate his apartment, 101 Gillespie Avenue, Apartment 6, in Summerside (the apartment) on or before May 3, 2008. Mr. Gallant did not vacate the apartment and the Corporation filed on May 6, 2008 an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2). In Form 2 the Corporation sought an order that possession of the apartment be surrendered and directing the sheriff to put the Corporation in possession of the apartment.

This appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Wednesday, June 25, 2008.

2. Evidence

Mr. Gallant stated that the Corporation took sides with the other tenant involved in this matter. Mr. Gallant was a tenant at the apartment for seven years without problems. The other tenant has only been at the Corporation's apartment building for a short time.

Mr. Gallant told the Commission that he received frequent "needling" from the other tenant. Mr. Gallant responded with strong language and later apologized to another tenant who had heard the confrontation. Mr. Gallant stated that his conduct was not severe enough to warrant an eviction and submitted that a written warning would have been appropriate.

Mr. Gallant informed the Commission that, at the hearing before the Director, he was unclear on the process and after he had heard the submissions of the Corporation, he believed that the matter was a "done deal".

Order No. LD08-214 refers to the parties having agreed to a May 26, 2008 rental agreement termination date.

Chris Reeves, on behalf of the Corporation, presented his case notes (Exhibit E-7). Mr. Reeves stated that he did not issue a written warning to Mr. Gallant because of the severity of the matter and because the other tenant felt threatened. Mr. Reeves stated that he had talked to Mr. Gallant at least once concerning the loudness of sounds coming from his apartment and at least once concerning cleanliness/odour from the apartment.

3. Decision

The Commission allows the appeal for the reasons that follow.

The evidence before the Commission indicates that Mr. Gallant did not apply to the Director to set aside the Form 4 Notice of Termination by Lessor of Rental Agreement. Section 16 of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**) reads as follows:

16. (1) A lessee who has received notice of termination for any of the reasons set out in section 13, 14 or 15 may apply to the Director for an order setting aside the notice.

(2) An application under subsection (1) shall be made by a lessee not later than ten days after being served with the notice.

(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.

(4) The lessee shall serve the lessor with a copy of an application of the lessee under subsection (1). 1988,c.58,s.16; 1990,c.53,s.6.

Pursuant to subsection 16(3), Mr. Gallant would ordinarily be deemed to have accepted the termination as he did not apply to set aside the Form 4. However, subsection 18(2) of the **Act** reads as follows:

18(2) *A notice to terminate*

- (a) *shall be signed by the person giving the notice, or his agent;*
- (b) *shall identify the premises in respect of which the notice is given;*
- (c) *shall state the date on which the notice is to be effective; and*
- (d) *where notice is given by the lessor, shall state the reasons for the termination. 1988,c.58,s.18.*

The Commission has reviewed the Form 4 filed by the Corporation and takes notice that, while a “reason” was checked off on the Form 4, the “particulars of termination” were left blank. There is no record of any document added to, or served with, the Form 4 to identify the particulars of the termination.

Section 9 of the ***Interpretation Act***, R.S.P.E.I. 1988, Cap. I-8 reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

The Commission finds that the Form 4, by not setting out the particulars of the termination, did not provide Mr. Gallant with the information necessary to make an informed decision to respond. This is of particular importance as there is no record of Mr. Gallant having received any written warning from the Corporation prior to the filing and service of the Form 4. Without such information, the Commission finds that it would be unfair to deem Mr. Gallant to have accepted the termination date set forth in the Form 4.

The Commission finds that Mr. Gallant, by filing his appeal, is requesting that the Commission, hearing the matter *de novo*, set aside the Form 4.

Order No. LD08-214 does not recite any particulars offered by the Corporation to justify the termination. The Commission therefore finds that the reasons for the termination were only satisfactorily added to the record at the hearing before the Commission. Accordingly, the Commission finds that the Corporation perfected its Form 4 at the hearing before the Commission.

Subsection 26(1) of the ***Act*** reads as follows:

26. (1) An 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.

Accordingly, the Commission finds that the Corporation ultimately satisfied the requirements of the Form 4 and Mr. Gallant ultimately applied to a tribunal with jurisdiction for an order setting aside the Form 4.

At the hearing before the Commission, Mr. Gallant stated under oath that he was unclear of the process in the hearing before the Director and that he believed that the outcome of that hearing was a “done deal”. Unfortunately, there is nothing in the record before the Commission to indicate that the hearing process had been explained at the outset of the hearing before the Director. There is also nothing in the record that the implications of reaching an agreement on a rental agreement termination date had been reviewed with the parties at the hearing before the Director. The Commission therefore finds that Mr. Gallant is not bound by this apparent oral agreement.

The evidence before the Commission is not sufficient to warrant a termination of the rental agreement. No tenants or persons other than Mr. Reeves have testified as to their observations concerning this matter. No letters have been filed from tenants or others concerning the events alleged in this matter. This is not to say that the events in question did not happen. In fact, Mr. Gallant admitted to using “strong language” following a confrontation with the other tenant. However, the Commission finds that the evidence presented by the Corporation is not compelling as that evidence primarily consists of the statements of others reported in the case notes of the Corporation’s representative.

Given Mr. Gallant’s background, his seven year history as a tenant at the apartment and the hearsay nature of the evidence offered against him, the Commission is greatly concerned by the failure of the Corporation to issue a written warning to Mr. Gallant prior to filing the Form 4 Notice of Termination by Lessor of Rental Agreement. A written warning, while not specifically required, is often highly advisable.

The Commission allows the appeal, and reverses the termination of the rental agreement ordered in Order LD08-214.

However, Mr. Gallant should be mindful that written documents associated with this matter have been filed with and issued by the Director and by the Commission. It is now on record that the Corporation is prepared to take action for Mr. Gallant’s alleged conduct. Mr. Gallant did, before the Commission, admit to some of this conduct. Mr. Gallant has now had ample warning that such conduct will not be tolerated by the Corporation. He has now had the opportunity to discuss these matters with people, such as his representative, who have his best interests at heart. The Corporation, no doubt, is now aware of the importance of putting on record the best available evidence to support its position. A reoccurrence of such alleged behaviour may very well result in the Corporation filing a fresh termination application and there is no guarantee that the Director, or upon appeal the Commission, will require a further written warning.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Gordon Gallant against Order No. LD08-214 of the Director of Residential Rental Property, dated May 23, 2008.

Order

WHEREAS Gordon Gallant has appealed against Order No. LD08-214 of the Director of Residential Rental Property, dated May 23, 2008;

AND WHEREAS the Commission heard the appeal in Charlottetown on June 25, 2008;

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

IT IS ORDERED THAT

1. The appeal is allowed.
2. The termination of the rental agreement previously ordered in Order No. LD08-214 is hereby reversed.

DATED at Charlottetown, Prince Edward Island, this 16th day of July, 2008.

BY THE COMMISSION:

John Broderick, Commissioner

Maurice Rodgerson, Chair

David Holmes, 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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