



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

**Docket LR08-011
Order LR08-10**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Paula Pineau against Order No. LD08-259 of the Director of Residential Rental Property, dated July 2, 2008.

BEFORE THE COMMISSION
on Monday, the 21st day of July, 2008.

John Broderick, Commissioner
Brian J. McKenna, Vice-Chair
David Holmes, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Land and Appeals Officer
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Paula Pineau against Order No. LD08-259 of the Director of Residential Rental Property, dated July 2, 2008.

Participants

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|----|------------------------|-------------------------------------|
| 1. | Appellant: | Paula Pineau |
| 2. | Respondent: | Nanegkam Housing Corporation |
| | Representative: | Dan Murray, Manager |

Reasons for Order

1. Introduction

The Appellant Paula Pineau (Ms. Pineau) has appealed Order No. LD08-259 issued by the Office of the Director of Residential Rental Property (the Director) on July 2, 2008. The Island Regulatory and Appeals Commission (the Commission) received Ms. Pineau's Notice of Appeal (Exhibit E-16) on July 3, 2008.

The Respondent Nanegkam Housing Corporation (the Corporation) served a Notice of Termination by Lessor of Rental Agreement (Form 4) on Ms. Pineau on May 29, 2008. According to the Form 4, Ms. Pineau was to vacate her unit on 223 Norwood Road in Charlottetown (the unit) on or before June 28, 2008. Ms. Pineau did not vacate the unit and the Corporation filed on June 26, 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, July 16, 2008.

2. Evidence

Ms. Pineau told the Commission that she has lived in the unit for the last two years. No complaints were received until her neighbour moved into the other side of the unit. Ms. Pineau noted that she works during the daytime. The music was never loud late at night. Ms. Pineau noted that the neighbour banged on the walls and was rude.

Dan Murray, the Corporation's manager, told the Commission that the Corporation would like to have possession of the unit by July 21, 2008. Mr. Murray noted that the Corporation relies on the written record before the Commission.

3. Decision

The Commission denies the appeal for the reasons that follow.

The Commission finds that there is no evidence that Ms. Pineau herself was the source of excessive noise from the unit. The evidence suggests that the majority of the complaints referred to incidents during the daytime, and the Commission accepts Ms. Pineau's testimony that she was at work during the day. However, section 6, Statutory Condition 3. of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**) reads as follows:

3. *Good Behaviour*

The lessee and any person admitted to the premises by the lessee shall conduct themselves in such a manner as not to interfere with the possession, occupancy or quiet enjoyment of other lessees.

Emphasis added.

Subsection 14(1)(a) of the Act reads as follows:

14. (1) *The lessor may also serve a notice of termination upon the lessee where*

(a) statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;

The written evidence before the Commission, including letters of complaint from the neighbor and police reports, indicates that a frequent daytime guest of Ms. Pineau's interfered with the quiet enjoyment of the tenant occupying the other side of the unit.

The documentary evidence satisfies the Commission that the Corporation provided a warning letter, dated November 13, 2007, to Ms. Pineau. This letter referred to an enclosed "conditional" Notice of Termination.

The Corporation sent Ms. Pineau a letter, dated May 29, 2008 enclosing a "Notice of Termination with a move-out date of June 28, 2008". There was no reference in this letter to the Notice of Termination being 'conditional'.

While it is certainly possible that Ms. Pineau may have thought that the May 29, 2008 Notice of Termination was also conditional, clarification could have been sought as the accompanying letter contained a mailing address, telephone number and fax number and concluded:

If you have any questions or concerns please contact our office immediately.

The evidence before the Commission indicates that Ms. Pineau did not apply to the Director to set aside the May 29, 2008 Form 4 Notice of Termination by Lessor of Rental Agreement. Section 16 of 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.

In the present appeal, the particulars of the termination were stated on the May 29, 2008 Notice of Termination and also referred to in the accompanying letter.

The Commission finds that the evidence before the Commission does not reveal any error in Director's Order No. LD08-259. Accordingly, the appeal is denied.

The Commission hereby orders that possession of 223 Norwood Road, Charlottetown Prince Edward Island be surrendered to Nanegkam Housing Corporation and its agent Atlantic Peoples Housing, and that the Sheriff is directed to put Nanegkam Housing Corporation and Atlantic Peoples Housing in possession of 223 Norwood Road, Charlottetown, Prince Edward Island at 12:00 p.m. on Friday July 25, 2008.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Paula Pineau against Order No. LD08-259 of the Director of Residential Rental Property, dated July 2, 2008.

Order

WHEREAS Paula Pineau has appealed against Order No. LD08-259 of the Director of Residential Rental Property, dated July 2, 2008;

AND WHEREAS the Commission heard the appeal in Charlottetown on July 16, 2008;

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

IT IS ORDERED THAT

1. The appeal is denied.
2. Possession of 223 Norwood Road, Charlottetown Prince Edward Island shall be surrendered to Nanegkam Housing Corporation and its agent Atlantic Peoples Housing.
3. The Sheriff is hereby directed to put Nanegkam Housing Corporation and Atlantic Peoples Housing in possession of 223 Norwood Road, Charlottetown, Prince Edward Island as of 12:00 p.m. on Friday July 25, 2008.

DATED at Charlottetown, Prince Edward Island, this 21st day of July, 2008.

BY THE COMMISSION:

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Brian J. McKenna*

Brian J. McKenna, Vice-Chair

(Sgd.) *David Holmes*

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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