



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

**Docket LR08-014
Order LR08-16**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Donna Wilson against Order
No. LD08-367, of the Director of Residential
Rental Property, dated October 3, 2008.

BEFORE THE COMMISSION
on Friday, the 28th day of November, 2008.

John Broderick, Commissioner
Gordon McCarville, Commissioner
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Donna Wilson against Order
No. LD08-367, of the Director of Residential
Rental Property, dated October 3, 2008.

Order

Participants:

1. For the Appellant:

Donna Wilson
Kenneth Giddings

2. For the Respondent:

Jason Pitre

Reasons for Order

1. Introduction

The Appellant Donna Wilson (Ms. Wilson) has appealed Order No. LD08-367 issued by the Office of the Director of Residential Rental Property (the Director) on October 3, 2008. The Island Regulatory and Appeals Commission (the Commission) received Ms. Wilson's Notice of Appeal (Exhibit E-10) on October 7, 2008.

On September 12, 2008 Ms. Wilson filed a Form 6 Application by Lessee to Set Aside Notice of Termination (Form 6) pursuant to section 16 of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**). Ms. Wilson's Form 6 was filed in response to a Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) dated September 11, 2008 and signed by Amanda McQuaid on behalf of the Respondent, P.E.I. Apartments Inc., (P.E.I. Apartments).

In the Form 4, P.E.I. Apartments checked off the following reason for seeking the termination of the rental agreement with Ms. Wilson:

You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees (s.14(1)(a) of Act);

P.E.I. Apartments provided the following particulars on the Form 4:

Loud voices, thumping and banging all hours of the day, people coming and going all hours of the night, loud music, dogs running and barking throughout the day and night.

The Director held a hearing on September 26, 2008. In Order LD08-367, the Director ordered the following:

1. *The lessee's application to set aside the Notice of Termination is denied.*
2. *The Notice of Termination by Lessor of Rental Agreement (Form 4) dated September 11, 2008 to be effective October 11, 2008 issued to Donna Wilson is valid.*
3. *The rental agreement between the lessee and the lessor is terminated effective October 11, 2008 and the lessee must vacate the rental unit on or before this date.*

2. Evidence

The evidence of Ms. Wilson before the Commission may be briefly summarized as follows. Ms. Wilson has lived over six months in the rental premises. During that time, she has received four eviction notices, three of which were ultimately dropped. She has two dogs. One dog pinched the skin, but did not break the skin, of another tenant. She denies the noise allegations made in the most recent eviction notice. She states that she has friends over and they sit around the kitchen table, play guitars and tap their feet. She asks her guests to remove their shoes and places a quilt underneath to muffle sound and vibration. She states that, at a prior hearing before the Director, Jason Pitre (Mr. Pitre) gave false testimony in that he stated under oath that he had spoken to Andrew Smith (Mr. Smith) during a hearing recess and it was okay to release his name. She spoke with Mr. Smith following that hearing and was advised that Mr. Smith had not spoken with Mr. Pitre. Exhibit E-12 is a note from Mr. Smith to this effect. She states that most of the noise came from Lisa Gallant's unit. She provided the Commission with a letter of support (Exhibit E-13) from Sara Grugios (Ms. Grugios), a new tenant across the hall.

The evidence of Mr. Pitre before the Commission may be briefly summarized as follows. P.E.I. Apartments is the property manager for William Knowles, the actual owner of the apartment building. Mr. Pitre is a principal of P.E.I. Apartments. Two tenants have vacated the apartment building due to the noise and disturbances from Ms. Wilson's unit. One of these tenants had been attacked by Ms. Wilson's dog. With respect to Ms. Wilson's allegation that Mr. Pitre gave false testimony under oath, he noted that he called his office during a recess of a hearing before the Director. Mr. Pitre spoke with P.E.I. Apartment's receptionist and asked her if they had received permission from Mr. Smith. The receptionist informed him that permission was received from Mr. Smith. When the hearing resumed, Mr. Pitre provided this information in his evidence.

3. Decision

The Commission has had the opportunity to review the September 4, 2008 letter from Jennifer Axworthy, a former tenant, and the September 26, 2008 email from Lisa Gallant, another former tenant. The Director had the additional benefit of hearing the testimony of Jennifer Axworthy and Amanda McQuaid, an employee of P.E.I. Apartments.

While the letter from Ms. Grugios is favourable to Ms. Wilson, it is noteworthy that Ms. Grugios moved into her unit on October 1, 2008. Ms. Wilson's unit may very well be quiet now; however, the focus of this matter is on the events that predate the September 11, 2008 Form 4.

Statutory condition 3. Good Behavior, contained within section 6 of 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.

The Commission finds that the conduct of Ms. Wilson and her guests prior to September 11, 2008 interfered with the quiet enjoyment of other tenants.

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;

Based on the available evidence, the Commission agrees with the findings of the Director and accordingly, the appeal is denied and the Director's Order LD08-367 is hereby confirmed, subject to a revised termination date.

The Commission is of the view that P.E.I. Apartments should consider implementing a process to advise a tenant of concerns prior to filing a Form 4. There is no evidence before the Commission that Mr. Pitre or his staff warned Ms. Wilson verbally or in writing. The Commission notes, however, that the **Act** does not require a lessor to warn or caution a lessee prior to issuing a Form 4.

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 denied.**
2. **Director's Order LD08-367 is hereby confirmed, subject to a revised termination date of December 15, 2008.**
3. **The Appellant Donna Wilson must vacate the residential premises located at 29 Grafton Street, Apartment 2, in Charlottetown, Prince Edward Island on or before December 15, 2008.**

DATED at Charlottetown, Prince Edward Island, this 28th day of November, 2008.

BY THE COMMISSION:

John Broderick, Commissioner

Gordon McCarville, Commissioner

Anne Petley, 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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