



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09001
Order LR09-02**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Roy Hemphill against Order
No. LD09-033, of the Director of Residential
Rental Property, dated January 29, 2009.

BEFORE THE COMMISSION
on Friday, the 27th day of February, 2009.

John Broderick, Commissioner
Ernest Arsenault, Commissioner
Gordon McCarville, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
For Susan Jefferson, Commission
Administrator

**IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Roy Hemphill against Order
No. LD09-033, of the Director of Residential
Rental Property, dated January 29, 2009.**

Order

On February 5, 2009, the Commission received a Notice of Appeal filed by the Appellant Roy Hemphill (Mr. Hemphill). Mr. Hemphill appealed Order No. LD09-033 issued by the Office of the Director of Residential Rental Property (the Director) on January 29, 2009.

This appeal proceeded to a hearing before the Commission on February 25, 2009. Clifford MacCormac (Mr. MacCormac) represented Mr. Hemphill at the hearing. Mr. Hemphill testified briefly at the hearing. Donald O'Keefe (Mr. O'Keefe) represented the Respondent Department of Social Services and Seniors (the Department).

In Order LD09-033, the Director ordered that the rental agreement between Mr. Hemphill and the Department be terminated as of February 5, 2009. The Director also ordered that Mr. Hemphill vacate the residential premises (apartment) on or before February 5, 2009.

Mr. MacCormac stated that Mr. Hemphill's memory was poor. Mr. MacCormac noted that he sees Mr. Hemphill weekly for a game of crib and is familiar with the apartment. Mr. MacCormac stated that the apartment is cleaner than the Department has indicated.

Mr. Hemphill stated that "the accusations are false".

Mr. O'Keefe reviewed the File Notes (Exhibit E-29). He referred to emails from home support workers who described the condition of the apartment. Mr. O'Keefe stated that Mr. Hemphill is not able to look after himself, his pets or his apartment.

Upon a review of all the evidence, the Commission finds that it is appropriate to uphold the decision of the Director to terminate the rental agreement and order Mr. Hemphill to vacate the apartment. Usually in similar circumstances the Commission would be inclined to allow a generous period of notice to Mr. Hemphill given his age, health and the vacancy rate (only 3 of 14 units are occupied) in this particular apartment building.

However, the Commission notes paragraph 12 of Exhibit E-29:

On January 6, 2009, a Home Support Worker advised me [Mr. O'Keefe] of a potential health and safety issue at Mr. Hemphill's apartment. She was putting a bag of garbage out and the bottom of the bag tore open. She noticed cigarette butts in the garbage and upon examining the bag, noticed a hole in the plastic that appeared to be melted from a cigarette. She also noticed a loaf of bread had been left on top of the stove and the burner had been turned on which melted the plastic bag the bread was in. As well, she observed cigarette burns on the table. The Home

Support Worker spoke to Mr. Hemphill regarding how dangerous his actions were with the cigarette butts and leaving the bread on the stove and advised him his actions could have caused a fire. She felt Mr. Hemphill did not understand how serious this matter was. Clifford MacCormac, a friend of Mr. Hemphill's, was present at this time.

The Commission is very concerned about the risk of such behaviour to the health and safety of Mr. Hemphill and the occupants of the other apartments in the building. Accordingly, the Commission will provide only a brief period of notice to Mr. Hemphill with respect to the requirement for him to vacate the apartment.

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. Order LD09-033 is hereby upheld.
3. The existing rental agreement between Roy Hemphill and the Department of Social Services and Seniors shall be terminated as of March 9, 2009.
4. Mr. Hemphill shall vacate apartment #7 of the Rollo Bay Seniors Building on or before March 9, 2009.

DATED at Charlottetown, Prince Edward Island, this 27th day of February, 2009.

BY THE COMMISSION:

John Broderick, Commissioner

Ernest Arsenault, Commissioner

Gordon McCarville, 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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