



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09-015  
Order LR09-16**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Jodi Van Iderstine against  
Order LD09-172, of the Director of  
Residential Rental Property, dated June 15,  
2009.

**BEFORE THE COMMISSION**  
on Tuesday, the 15th day of September,  
2009.

John Broderick, Commissioner  
Ernest Arsenault, Commissioner  
David Holmes, Commissioner

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# Order

Compared and Certified a True Copy

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(Sgd.) Susan Jefferson  
Commission Administrator

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## Introduction

On June 24, 2009, the Commission received a Notice of Appeal filed by the Appellant Jodi Van Iderstine (Ms. Van Iderstine). Ms. Van Iderstine appealed Order No. LD09-172 issued by the Office of the Director of Residential Rental Property (the Director) on June 15, 2009.

This matter concerns residential premises [the premises] situate at 471 Abney Road in Abney, Prince Edward Island, said premises owned by the Respondent Robin Davidson [Ms. Davidson].

By way of background, in Order LD09-172 the Director found:

*Despite repeated verbal and written warnings from the lessor [Ms. Davidson], the lessee [Ms. Van Iderstine] failed to clean up the property resulting in damage to the premises. Therefore, the lessee's second application to set aside the Notice of Termination dated May 25, 2009 to be effective June 25, 2009 is hereby denied.*

The Director then ordered the following:

- 1. The lessee's second application to set aside the Notice of Termination is denied.*
- 2. The Notice of Termination dated May 25, 2009 to be effective June 25, 2009 is valid.*
- 3. The rental agreement between the lessee and the lessor for the residential premises is hereby terminated as of June 25, 2009. The lessee shall vacate the residential premises on or before this date.*

The appeal proceeded to a hearing on July 16, 2009. Ms. Van Iderstine represented herself and called her son William Van Iderstine as a witness. Ms. Davidson represented herself.

## Evidence

Ms. Van Iderstine told the Commission that when she first rented the premises from Ms. Davidson, she was informed that she could do what she wanted at the premises so long as she paid the rent. Ms. Van Iderstine noted that she and her son have fenced poultry at the premises. They have two dogs. They

often do not have a working lawn mower. They have a woodpile to store wood for heating the premises. She noted numerous deficiencies with the premises.

Ms. Van Iderstine objected to the introduction of Exhibit E-48, photographs of the premises taken by Ms. Davidson, on the basis that Ms. Davidson failed to give a minimum of 24 hours notice before setting foot on the property.

Ms. Davidson told the Commission that on July 8, 2009 she left a note at the premises explaining that she would be taking pictures of the premises on July 10, 2009. The pictures forming Exhibit E-48 are photographs of the outside of the premises taken on July 10, 2009. Ms. Davidson submitted that these photographs demonstrate why she wishes to evict Ms. Van Iderstine and her son. She submitted that Ms. Van Iderstine has had plenty of opportunity to cut the grass, move the poultry fencing and tidy up the outside of the premises. She submitted that Ms. Van Iderstine “slandered me today with her long testimony”.

## Decision

The Commission denies the appeal and upholds the decision of the Director contained in Order LD09-172 for the reasons that follow.

The Commission determined at the hearing that Exhibits 16 and 19 were not relevant and would not be accepted into evidence.

The Commission has considered the objections of Ms. Van Iderstine to the introduction of Exhibit E-48. Ms. Van Iderstine is of the view that this exhibit should not be accepted as Ms. Davidson failed to provide at least 24 hours notice before entering the premises. Ms. Davidson counters that she left a note two days previously notifying Ms. Van Iderstine that she intended to take photographs of the premises.

Clause 6 of section 6 of the **Rental of Residential Property Act** [the **Act**] reads as follows:

6. *Entry of Premises*

*Except in the case of an emergency, the lessor shall not enter the premises without the consent of the lessee unless the lessor has served written notice stating the date and time of the entry to the lessee at least twenty-four hours in advance of the entry and the time stated is between the hours of 9 a.m. and 9 p.m.*

Section 1, paragraph (p) of the **Act** reads as follows:

(p) *"residential premises" or "premises" includes*

*(i) any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by a natural person as a residence or that part of any such place that is or may be occupied by a natural person as a residence, whether such residential premises are furnished, partly furnished or unfurnished,*

*(ii) land rented as a mobile home site whether or not the lessor also rents that mobile home to the lessee,*

*but does not include premises exempted by the regulations;*

The Commission accepts Ms. Davidson's testimony that she left a note on July 8, 2009 advising that she would take photographs on July 10, 2009. Accordingly, the Commission finds that the notice requirement was met and Exhibit E-48 is admitted into evidence.

Section 8, paragraph (e) of the **Act** reads as follows:

7. *Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the Director shall investigate the matter and may*

...

*(e) authorize the termination of the rental agreement in accordance with section 11;*

Section 6, clause 4 reads as follows:

6. *Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:*

...

*4. Obligation of the Lessee*

*The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.*

The Commission finds that the photographs that make up Exhibit E-48 establish that the actions of Ms. Van Iderstine damaged the exterior of the premises beyond the standard of normal wear and tear. Accordingly, the Commission hereby denies the appeal and upholds Order LD09-172, subject to a revised termination date for the rental agreement.

Ms. Van Iderstine requested that the Commission provide sufficient notice for her to move out of the premises, in the event the Commission were to deny her appeal. As it will take some time for Ms. Van Iderstine and her son to move themselves and their belongings, the Commission hereby establishes a new termination date of October 31, 2009. Ms. Van Iderstine and her son shall vacate the premises on or before October 31, 2009.

The Commission notes that much of the testimony provided at this long hearing went beyond the actual issue before the Commission. The Commission wishes to go on record as noting that the presentation of lengthy evidence that is not relevant to the appeal runs the risk of obscuring the legitimate issues properly before the Commission.

**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 hereby denied.
2. The rental agreement between the Appellant Jodi Van Iderstine and the Respondent is hereby terminated as of October 31, 2009. The Appellant shall vacate the premises on or before said date.

**DATED** at Charlottetown, Prince Edward Island, this 15th day of September, 2009.

**BY THE COMMISSION:**

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ernest Arsenault

Ernest Arsenault, Commissioner

(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.*

IRAC141y-SFN(2008/10)