



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09-017  
Order LR09-19**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Hubert and Joyce  
Marchbank against Order LD09-184, of the  
Director of Residential Rental Property,  
dated June 24, 2009.

**BEFORE THE COMMISSION**  
on Friday, the 25th day of September, 2009.

John Broderick, Commissioner  
David Holmes, Commissioner  
Anne Petley, 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 July 15, 2009, the Commission received a Notice of Appeal filed by Hubert and Joyce Marchbank (the Marchbanks). The Marchbanks appealed Order No. LD09-184 issued by the Office of the Director of Residential Rental Property (the Director) on June 24, 2009.

By way of background, Michael LeBlanc (Mr. LeBlanc) made an application to the Director on April 22, 2009, pursuant to section 8(e) and section 6, statutory conditions 6 and 9, of the *Rental of Residential Property Act* (the *Act*), seeking a termination of the rental agreement on the basis that the Marchbanks failed to comply with his statutory rights with respect to entry of premises and quiet enjoyment of the premises.

In Order LD09-184, the Director found that Mr. LeBlanc's quiet enjoyment of the rental premises had been so significantly and persistently impaired by the Marchbanks that early termination of the rental agreement was warranted. It was ordered that the rental agreement be terminated effective April 30, 2009.

The appeal was heard by the Commission on August 10, 2009. The Marchbanks represented themselves and called Doug and Tyler Marchbank as witnesses. Mr. LeBlanc represented himself and called Sandra LeBlanc, Patrick LeBlanc and Grant Noonan as witnesses.

## Evidence

At the hearing before the Commission, the Marchbanks filed Exhibit E-23 which submitted their position. In this submission, the Marchbanks contended that they did comply with statutory conditions 6 and 9 of the *Act*. The Marchbanks submitted orally that Mr. LeBlanc was the only tenant who complained, that they never 'bullied' previous tenants, that the tenants were not permitted to 'party' and that they never 'dropped in' unexpectedly. The Marchbanks added that typically they provided several days notice before 'dropping in'.

Mr. LeBlanc submitted that the Marchbanks often 'dropped in' without providing him with any notice. He seldom heard them knock. The Marchbanks would often direct cleanup of the premises during these visits and assign tasks among the tenants.

## Decision

The Commission denies the appeal for the reasons that follow.

The evidence satisfies the Commission that the Marchbanks unintentionally violated statutory conditions 6 and 9 with respect to Mr. LeBlanc's tenancy. The situation was complicated by the fact that the Marchbanks rented a house to a group of male university students, two of which were their own sons. Unfortunately, the line between the Marchbanks' role as concerned parents and as landlords became blurred.

Statutory conditions 6 and 9 of the **Act** read 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.*

...

*9. Quiet Enjoyment*

*The lessee shall have quiet enjoyment of the residential premises, and shall not be barred from free access to them during the term of the rental agreement.*

The issue is ultimately one of notice. While it does appear that the Marchbanks did try to give advance notice of their visits, this notice was either directed to their own sons, or simply didn't get communicated to Mr. LeBlanc. It also appears this notice was often of a verbal nature. These visits were rather frequent and the tenants were often enlisted to clean the premises under the direction, and with the assistance of, the Marchbanks.

Although the Marchbanks had honourable intentions, their failure to provide written notice to Mr. LeBlanc pursuant to statutory condition 6 violated Mr. LeBlanc's right to quiet enjoyment of the premises. The Commission agrees with the Director that the violation of this right was significant and persistent. Accordingly, the Commission finds that it was appropriate for the Director to terminate the rental agreement effective April 30, 2009. The appeal is hereby denied.

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**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 LD09-184 is hereby confirmed.

**DATED** at Charlottetown, Prince Edward Island, this **25th** day of **September, 2009**.

**BY THE COMMISSION:**

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) David Holmes

David Holmes, Commissioner

(Sgd.) Anne Petley

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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