



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Dockets: LR09019  
and LR09022  
Order LR09-21**

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, of Orders No. LD09-238, LD09-242, LD09-239, LD09-234 and LD235, of the Director of Residential Rental Property, dated August 14, 2009.

**BEFORE THE COMMISSION**

on Friday, the 23<sup>rd</sup> day of October, 2009.

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

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# Order

Compared and Certified a True Copy

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(Sgd.) Susan Jefferson  
Commission Administrator

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, of Orders No. LD09-238, LD09-242, LD09-239, LD09-234 and LD235, of the Director of Residential Rental Property, dated August 14, 2009.

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# Order

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## Introduction

On August 17, 2009, the Commission received a Notice of Appeal (Docket LR09-019) filed by Steven Halman. Mr. Halman appealed Order No. LD09-238 issued by the Office of the Director of Residential Rental Property (the Director) on August 14, 2009.

On August 31, 2009, the Commission received Notices of Appeal (Docket LR09-022) filed by Irene Saunders, Bill and Mark Kinney, Lana Baglole and Inez Bailey (the Residents). The Residents appealed Order Nos. LD09-242, LD09-239, LD09-234 and LD09-235.

On September 9, 2009 the Commission received a letter from Mr. Halman requesting that his appeal be consolidated with the appeals of the Residents.

On September 10, 2009, the Commission approved the consolidation of Docket Nos. LR09-019 and LR09-022.

By way of background, L & A MacEachern Holdings Ltd. (L & A MacEachern) filed with the Director Form 4 Notices of Termination by Lessor of Rental Agreement (Notices of Termination) dated May 30, 2009. The Director subsequently received the Form 6 Application by Lessee to Set Aside Notice of Termination (Applications to Set Aside) from each of Steven Halman, Irene Saunders, Bill Kinney and Mark Kinney, Lana Baglole and Inez Bailey (collectively the Appellants).

In Orders LD09-238, LD09-242, LD09-239, LD09-234 and LD09-235, the Director found that the Applications to Set Aside were invalid, the Notices of Termination were valid and the rental agreement between MacEachern and each of the Appellants is to be terminated as of May 31, 2010.

This appeal proceeded to a hearing before the Commission on September 24, 2009. The Appellants were represented by Lana Baglole who testified at the hearing. L & A MacEachern was represented at the hearing by legal counsel, Gordon MacKay, Q.C. and Ken MacEachern testified at the hearing.

## Evidence

Ms. Baglole submitted that the May 31, 2010 rental agreement termination date imposes an undue hardship on the Appellants. She stated that Appellants face an undue hardship as they are required to remove their older model mobile

homes from the Idle Wheels Mobile Home Park, owned by L & A MacEachern. While acknowledging that the one year notice provided to the Appellants by L & A MacEachern is greater than the minimum notice set out in the **Rental of Residential Property Act** (the **Act**), Ms. Baglolo stated that the cost of relocating the mobile homes may be prohibitive. She noted the lack of mobile home parks willing to accept older mobile homes. She also noted the high cost of obtaining land and utilities which would discourage owners of an older mobile home from acquiring their own land for their home. In addition, she noted that some of the mobile homes may be too old to be safely moved.

Ken MacEachern testified that he is the president of L & A MacEachern. He noted that the mobile home park is experiencing trouble with its sewer system. He stated that the sewer system is old and tree roots have been growing into the system. Sewer backup has been occurring into the units. The sewer system extends underneath the existing mobile homes. L & A MacEachern would not be able to develop the site and leave the mobile homes there. He noted that he bought the park in 2003. It was always his intent to re-develop the property. He noted that the mobile homes in the park rent their sites on a month-to-month basis. One tenant has paid up to the end of May 2010.

Mr. MacKay submitted that L & A MacEachern provided the Appellants with more notice than required by the **Act**. He noted that when a home owner rents land for their home, they lack the security of tenure which is provided by owning the land.

Mr. MacKay noted that the City of Charlottetown has the authority to identify land for the development of a new mobile home park, yet they have not done so to date.

## Decision

The Commission denies these consolidated appeals for the reasons that follow.

Subsections 15(1) and 15(2) of the **Act** read as follows:

**15. (1) Where the lessor in good faith seeks to**

*(a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;*

*(b) convert the premises to a use other than residential use;*

*(c) renovate the premises where the nature of the renovations are advised to the lessee and are such that the renovations cannot be carried out while the lessee occupies the premises;*

*(d) demolish the premises,*

*the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.*

...

*(2) Notwithstanding subsection (1), where a lessor serves a notice of termination under this section respecting a mobile home site, other than where the lessee is renting a mobile home and the mobile home site under*

*a single rental agreement, the period of notice shall not be less than six months.*

The **Act** does not provide any additional protection for mobile home owners who rent a site in a mobile home park.

The **Act** sets out the statutory law with respect to the rental of residential property, including the requirements for a notice of termination. The Legislative Assembly of the Province of Prince Edward Island enacted the law. The Director, at first instance, is required to apply the law. The Commission, on appeal, is required to apply the law. The **Act** attempts to strike a balance between the rights of lessors (landlords) and lessees (tenants). In the present case, L & A MacEachern has given notice of termination which exceeds the minimum required by the **Act**. The **Act** does not provide the Commission with the authority to overrule the law or temper the law, even where hardship may occur.

Accordingly, the appeals are 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 appeals are hereby denied.
2. Orders LD09-238, LD09-242, LD09-239, LD09-234 and LD09-235 are hereby confirmed in their entirety.

**DATED** at Charlottetown, Prince Edward Island, this 23<sup>rd</sup> day of October, 2009.

**BY THE COMMISSION:**

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(Sgd.) *John Broderick*

John Broderick, Commissioner

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(Sgd.) *David Holmes*

David Holmes, Commissioner

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(Sgd.) *Ernest Arsenault*

Ernest Arsenault, 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)