



**Docket LR09-029
Order LR09-24**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Greg Bradley against
Orders LD09-309 and LD09-418, of the
Director of Residential Rental Property,
dated October 7, 2009 and October 19, 2009.

BEFORE THE COMMISSION
on Thursday, the 29th day of October, 2009.

John Broderick, Commissioner
David Holmes, 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
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Orders LD09-309 and LD09-418, of the
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Introduction

On October 20 and 21, 2009, the Commission received two Notices of Appeal filed by Greg Bradley (Mr. Bradley). In the October 20, 2009 [dated October 27, 2009 in error] Notice of Appeal, Mr. Bradley appealed Order No. LD09-309 issued by the Office of the Director of Residential Rental Property (the Director) on October 7, 2009. In the October 21, 2009 Notice of Appeal, Mr. Bradley appealed Order LD09-418 issued by the Director on October 19, 2009.

By way of background, the Respondent Kim McBurney (Ms. McBurney) filed two Notices of Termination by Lessor of Rental Agreement (Form 4), dated August 10, 2009 and August 17, 2009. In both Form 4 documents, Ms. McBurney seeks possession of the residential premises following a two month notice period in order that she may resume the occupation of the residential premises.

In Order LD09-309, the Director found that the Notice of Termination dated August 17, 2009 was effective October 17, 2009 and Mr. Bradley was to vacate the residential premises by that same date. Order LD09-418 found that Mr. Bradley had not vacated the residential premises by October 17, 2009 and therefore ordered that possession of the rental premises be surrendered to Ms. McBurney and the Sheriff directed to put Ms. McBurney in possession of the residential premises at noon, October 21, 2009.

The appeal was heard by the Commission on October 28, 2009. Mr. Bradley represented himself. Ms. McBurney represented herself and called Peter Griesbauer as a witness.

Evidence

Mr. Bradley testified in detail as to the background of the matter and the various deficiencies of the residential premises.

Ms. McBurney responded to Mr. Bradley's testimony. She also testified that she wants to move back into the residential premises.

Decision

The Commission denies the appeal for the reasons that follow.

Section 15(1) of the ***Rental of Residential Property Act*** reads 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.

In the present appeal, the issue is whether Ms. McBurney seeks, in good faith, to have possession of the rental premises for herself and her child.

In the evidence before the Commission, Mr. Bradley raised the theory that Ms. McBurney was seeking possession of the rental premises in order to rent the premises to a new tenant. Ms. McBurney's evidence on this issue is that she wishes to resume occupancy of the premises following her return from a one year sabbatical.

The Commission finds that Ms. McBurney voiced her intent to re-occupy the residential premises by way of her August 1, 2009 letter to Mr. Bradley. At the hearing before the Commission, Ms. McBurney reiterated under oath her desire to have possession of the premises for occupation by herself and her child.

The evidence on this issue satisfies the Commission that Ms. McBurney is acting in good faith. Ms. McBurney is a teacher who had taken a one year sabbatical. She rented her home to Mr. Bradley during this sabbatical so it would be occupied and to provide her with additional income. She has returned from her sabbatical, is once again teaching and it therefore is logical, in the absence of objective evidence to the contrary, to find that she in good faith wishes to resume living in her home.

Accordingly, the appeal is denied and Orders LD09-309 and LD09-418 of the Director are hereby confirmed, subject to a revision of the date of possession.

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. Orders LD09-309 and LD09-418 are hereby confirmed, subject to a revised date of possession.**
- 3. Possession of 10 Cove Road Stratford Prince Edward Island be surrendered to Kim McBurney and the Sheriff is hereby directed to**

put Ms. McBurney in possession of the aforementioned residential premises at noon, November 3, 2009.

DATED at Charlottetown, Prince Edward Island, this 29th day of October, 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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