



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09037  
Order LR10-11**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Carl Stewart against Order  
No. LD09-384 of the Director of Residential  
Rental Property, dated December 7, 2009.

**BEFORE THE COMMISSION**

on Wednesday, the 3rd day of February,  
2010.

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

**IN THE MATTER** of an appeal, under Section 25 of the Rental of Residential Property Act, by Carl Stewart against Order No. LD09-384 of the Director of Residential Rental Property, dated December 7, 2009.

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# Order

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## INTRODUCTION

On December 15, 2009, the Commission received a Notice of Appeal filed by Carl Stewart (Mr. Stewart). Mr. Stewart appealed Order No. LD09-384 issued by the Office of the Director of Residential Rental Property (the Director) on December 7, 2009.

By way of background, Meika Keunecke is the owner of the premises and PEI Apartments Inc. (PEI Apartments) is her representative. PEI Apartments filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated November 6, 2009. On November 13, 2009, the Director received a Form 3 – Notice of Termination by Lessee of Rental Agreement filed by Mr. Stewart on behalf of himself and the other lessee, Angelica Kamanos (Ms. Kamanos).

In Order LD09-384 the Director stated:

*“The rental agreement between the lessees and the lessor for the residential premises is hereby terminated as of December 11, 2009. The lessees must vacate the residential premises on or before this date.”*

This appeal proceeded to a hearing before the Commission on January 4, 2010. Mr. Stewart was present at the hearing. Leigh Ogg (Ms. Ogg) represented PEI Apartments at the hearing.

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## EVIDENCE

Mr. Stewart testified that he keeps the residential premises clean. He noted that he had offered to pay for the window damage caused by an uninvited guest. Mr. Stewart noted that a representative of PEI Apartments had spoken to him about the noise and ever since he has kept the noise down.

Ms. Ogg noted that PEI Apartments had received complaints about the noise. One tenant moved out of an apartment in the same building because of the noise. She noted that the police may not have documented all complaints. She noted that PEI Apartments does not send a representative to go to an apartment to check on noise complaints.

## DECISION

The Commission allows the appeal for the reasons that follow.

An October 21, 2009 letter from PEI Apartments to Mr. Stewart reads as follows:

*“Dear Carl,*

*Since the beginning of your tenancy, three separate police reports have been filed concerning calls to your address.*

*Numerous complaints have been logged at our office from neighboring tenants voicing their dissatisfaction at having to endure party noise and damages to the apartment caused by you and/or visitors to your apartment.*

*PEI Apartments expect all of our tenants to respect all other tenants quiet enjoyment of their residence; not doing so, is in direct violation of your lease.*

*Your discussion at the office yesterday with Jason regarding these issues has been noted and it is expected that you will comply with the terms of your lease with out [sic] further incident.*

***Please consider this your final warning.***

*Additional noise complaints will result in eviction action being taken.*

*Thank you for your urgent attention to this matter.*

*PEI Apartments Inc”*

The Commission notes that PEI Apartments then issued a Notice of Termination dated November 6, 2009.

The Commission finds that PEI Apartments gave Mr. Stewart a “final warning” on October 21, 2009. Accordingly, the Commission has reviewed the appeal file and notes that there is no evidence of any incident from October 21, 2009 onward which would warrant an eviction of Mr. Stewart.

Further, the Commission notes that the October 21, 2009 letter from PEI Apartments to Mr. Stewart appears to misrepresent the facts. According to Order LD09-384, the City of Charlottetown Police Department did not have any complaints on their computer system lodged against Mr. Stewart or Ms. Kamanos. However, they had received a call from Mr. Stewart on September 22, 2009. Based on the file before the Commission, there would appear to be only one tenant couple who complained to PEI Apartments about noise from Mr. Stewart’s apartment. The evidence before the Commission is that PEI Apartments does not keep a complaint log. Instead, PEI Apartments advises the aggrieved tenants to file a complaint with the police.

The Commission finds that PEI Apartments appears to have exaggerated to some extent the nature of the noise complaints made against Mr. Stewart. While there might have still been enough evidence to support evicting Mr. Stewart, the Commission is mindful that PEI Apartments gave Mr. Stewart a final warning. As there is no evidence of inappropriate behaviour on the part of Mr. Stewart since the date of the October 21, 2009 “final warning” letter, the Commission allows the appeal.

The appeal is allowed. Order LD09-384 of the Director is hereby quashed and the Director’s decision, that the rental agreement between PEI Apartments and Mr. Stewart and Ms. Kamanos is terminated, is hereby reversed.

**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 allowed and Order LD09-384 is hereby quashed.
2. The Director’s decision, that the rental agreement between PEI Apartments and Carl Stewart and Angelica Kamanos is terminated, is hereby reversed.

**DATED** at Charlottetown, Prince Edward Island, this 3rd day of February, 2010.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *John Broderick*

John Broderick, Commissioner

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(Sgd.) *David Holmes*

David Holmes, Commissioner

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(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.*

## NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141y-SFN(2009/11)