



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10016
Order LR10-22**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Carl Stewart and Anjelica
Kamanos against Orders LD10-218 and
LD10-219 of the Director of Residential
Rental Property, dated August 5, 2010.

BEFORE THE COMMISSION
on Tuesday, the 17th day of August, 2010.

Allan Rankin, Vice-Chair
John Broderick, Commissioner
Chester MacNeill, 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 Property Act, by Carl Stewart and Anjelica Kamanos against Orders LD10-218 and LD10-219 of the Director of Residential Rental Property, dated August 5, 2010.

Order

INTRODUCTION

On August 10, 2010, the Commission received a Notice of Appeal filed by Carl Stewart (Mr. Stewart). Mr. Stewart appealed Order Nos. LD10-218 and LD10-219 issued by the Office of the Director of Residential Rental Property (the Director) on August 5, 2010.

By way of background, Mamdouh and Margot Elgharib (the Respondents) are the owners of the premises. The Respondent filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated July 22, 2010. On July 23, 2010, the Director received a Form 6 – Application by Lessee to Set Aside Notice of Termination dated July 23, 2010 filed by Mr. Stewart on behalf of himself and the other lessee, Angelica Kamanos (Ms. Kamanos).

In Order LD10-218, the Director found:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination dated July 22, 2010 to be effective August 22, 2010 is dismissed.*
- 2. The Notice of Termination dated July 22, 2010 to be effective August 22, 2010 is valid.”*

In Order LD10-219, the Director found:

“IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the lessors and the lessees is terminated as of Monday, August 9, 2010 at 12 noon.*
- 2. If the lessees do not vacate the premises by Monday, August 9, 2010 at 12 noon, the lessors may apply without further notice to the lessees for an order for delivery of possession of the rental premises.”*

The Commission heard the appeal on August 13, 2010. Mr. Stewart represented the Appellants and appeared in person. Ms. Kamanos was also present. Derrick Kilcup testified on behalf of the Appellants. Mamdouh Elgharib represented the Respondents.

After hearing the testimony of the parties and Mr. Kilcup and reviewing all the documentary evidence before the Commission, the Commission finds that, on the civil standard of the balance of probabilities, the occupation of the premises by the Appellants caused a public health concern to arise in the premises.

The evidence before the Commission is that the public health concern did not exist in the premises prior to January 2010 when the Appellants moved in. The evidence is clear that this same concern existed in the Appellants' previous apartment. While it is possible that the public health concern in the premises originated from another source, the Appellants did not offer any objective evidence or a professional opinion to support this theory and therefore it is more probable than not that the Appellants transmitted the public health concern from their old apartment to the premises. Pursuant to statutory condition 6.3 of the *Rental of Residential Property Act*, the Commission finds that the presence of this public health concern in the premises interfered with the quiet enjoyment of other tenants.

Accordingly, the Commission agrees with the findings of the Director in Orders LD10-218 and LD10-219 and hereby orders the Appellants to vacate the premises immediately. As both of the Director's Orders remain in full force and effect, the Respondents may apply to the Director without further notice to the Appellants for an order for delivery of possession of the rental premises.

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. **The Appellants are hereby ordered to vacate the premises immediately.**
3. **The Director's Orders LD10-218 and LD10-219 remain in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this 17th day of August, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*
Allan Rankin, Vice-Chair

(Sgd.) *John Broderick*
John Broderick, Commissioner

(Sgd.) *Chester MacNeill*
Chester MacNeill, 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)