



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11016
Order LR11-17**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by John R. Beaton against
Order LD11-132 issued by the Director of
Residential Rental Property dated June 2,
2011

BEFORE THE COMMISSION
on Thursday, the 9th day of June, 2011.

John Broderick, Commissioner
Jean Tingley, Commissioner
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

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Section 25 of the Rental of Residential
Property Act, by John R. Beaton against
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INTRODUCTION

On June 3, 2011 the Commission received a Notice of Appeal from John R. Beaton (the Appellant) requesting an appeal of Order LD11-132 issued by the Director of Residential Rental Property (the Director).

By way of background, on May 25, 2011 Pendar Mahmoodi, on behalf of Mehdi Mahmoodi and Pendar Mahmoodi (the Respondents,) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated May 25, 2011 together with copies of two (2) Form 4's – Notice of Termination by Lessor of Rental Agreement dated May 4, 2011 and April 30, 2011.

A hearing before the Director took place on May 31, 2011 and Order LD11-132 was issued which states, in part:

“IT IS THEREFORE ORDERED THAT:

1. *Possession of the residential premises be surrendered to the lessors and the Sheriff is directed put the lessors in possession of the residential premises at 12:00 noon, June 3, 2011.”*

A hearing before the Commission was held on June 9, 2011. The Appellant was present. Mehdi Mahmoodi appeared on behalf of the Respondents.

EVIDENCE

The Appellant told the Commission that the residential premises have had heating problems during the month of May. The new toilet has not been installed. The back door to the residential premises cannot be used.

The Appellant admitted that he has not paid the \$200.00 he withheld from the May rent. The Appellant also admitted that he has not paid rent for June.

Mr. Mahmoodi acknowledged that the furnace has been shut off for safety reasons. A chimney professional is expected to repair the chimney on June 21, 2011.

The Commission's Decision

The Commission agrees with the decision of the Director. A tenant has no right to withhold rent even if repairs are needed. The ***Rental of Residential Property Act*** (the ***Act***) provides a process and a remedy to require a lessor to make such repairs. There is no evidence before the Commission that the Appellant has pursued such process.

A tenant has an obligation to pay rent. The Appellant failed to invalidate the May 4, 2011 Form 4 Notice of Termination by Lessor when he did not pay the outstanding rent within ten days of receiving that Notice. The Appellant did not apply, within the required time, to the Director under section 16 of the ***Act*** to set aside the May 4, 2011 and April 30, 2011 Notices of Termination. Furthermore, the Appellant has not paid rent for the month of June 2011, said rent due June 1, 2011.

Accordingly, the Commission denies the appeal.

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 hereby denied.
2. Possession of the residential premises located at 251 Queen Street, bottom floor apartment, be surrendered to the Respondents (lessors) Mehdi Mahmoodi and Pendar Mahmoodi and the Sheriff is directed to put said Respondents in possession of the residential premises at 12:00 noon, June 13, 2011.

DATED at Charlottetown, Prince Edward Island, this 9th day of June, 2011.

BY THE COMMISSION:

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Jean Tingley*

Jean Tingley, Commissioner

(Sgd.) *Peter McCloskey*

Peter McCloskey, 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)