



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR11017  
Order LR11-20**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by John Shea against Order  
LD11-136 issued by the Director of  
Residential Rental Property dated June 6,  
2011

**BEFORE THE COMMISSION**  
on Thursday, the 30th day of June, 2011.

John Broderick, Commissioner  
Peter McCloskey, Commissioner  
Jean Tingley, 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 John Shea against Order  
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## Background

On June 14, 2011, the Commission received a Notice of Appeal filed by John Shea (the Appellant). The Appellant appealed Order LD11-136 issued by the Office of the Director of Residential Rental Property (the Director) on June 6, 2011.

By way of background, on May 25, 2011 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached the Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 16, 2011 signed by Killiam Properties Inc. (the Respondent).

The matter was initially heard by the Director on June 2, 2011. In Order LD11-136 the Director terminated the rental agreement between the parties as of June 16, 2011 and ordered the Appellant to vacate the premises on or before said date.

The Commission heard this appeal on June 27, 2011. The Appellant was present and was represented by Mason Shea. Jonathan Shea testified on behalf of the Appellant. The Respondent was represented by Wayne Beaton. Tami Strickland testified on behalf of the Respondent.

## Evidence

Mason Shea told the Commission that there were no pictures of the bathroom or kitchen taken by the Respondent as those rooms were clean and tidy. He submitted that in a 'dirty' apartment the kitchen and bathroom are normally dirty. He presented recent photographs of the residential premises and submitted that his father's apartment was untidy, not dirty and the apartment is now both clean and tidy. He submitted that the burn marks on the carpeted floor, and on the area rug owned by his father, were caused by the end of a cigarette falling on the floor and the ash was then swept up. This is very different from a safety point of view from a lit cigarette dropping to the floor. The Appellant often cooks for himself late at night due to his work schedule.

Wayne Beaton told the Commission that the Respondent is primarily concerned with the safety of the other tenants in the building. He explained that two years ago there was a cigarette related fire in another apartment (occupied by a different tenant) in the same building. Mr. Beaton noted that when the Appellant moved into his unit in 2007, new carpet had been installed. He submitted that cigarette burn marks should not be considered normal wear and tear.

Tami Strickland told the Commission that the Respondent performed a routine fire alarm inspection. They replaced a smoke detector and were concerned by the lack of cleanliness in the apartment. They took pictures of what they saw. Ms. Strickland noted that she found three cigarette burn marks in the carpeting. A window sill was dirty and there were stains on the carpet. The Appellant always pays his rent and the sole complaint was a smoke alarm going off late at night when the Appellant fell asleep and some food was burned.

## Decision

The Commission allows the appeal and reverses the decision of the Director to terminate the rental agreement between the properties.

The Appellant smokes in the residential premises and this has been accepted by the Respondent since the Appellant's tenancy began in 2007. Under the circumstances, the presence of cigarette burns in the carpet, while constituting damage, is not uncommon. There is no evidence that the Respondent ever issued the Appellant a written warning for uncleanness. There is no evidence of any cigarette burns in the bedroom or on upholstered furniture. The Form 4 Notice of Termination by Lessor of Rental Agreement was issued based on an alleged failure to fulfill responsibility for ordinary cleanliness of the interior of the residential premises; said Form 4 was not issued pursuant to subsection 14(1)(e) [impairment of safety or lawful right or interest] of the ***Rental of Residential Property Act***.

The appeal is allowed, the Director's Order is reversed and the Appellant may continue to reside in the residential premises. However, the Commission cautions the Appellant that untidiness increases the risk of a cigarette related fire. While modern carpeting is usually made fire resistant as part of the manufacturing process, the same cannot be said for clothing, plastic bags and other debris haphazardly strewn about the apartment. In order to minimize the risk to himself, other tenants and the Respondent's property, the Appellant must endeavour to keep his apartment in a clean and tidy condition. The Respondent, so long as the statutory notice requirements are carefully observed, may reasonably inspect the Appellant's unit and if the Respondent has concerns for the safety of other tenants, a remedy may be available under the ***Rental of Residential Property Act***.

**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.**
2. **Order LD11-136 of the Director of Residential Rental Property, dated June 6, 2011, is hereby reversed.**

**DATED** at Charlottetown, Prince Edward Island, this **30th** day of **June**,  
**2011**.

**BY THE COMMISSION:**

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Peter McCloskey*

Peter McCloskey, Commissioner

(Sgd.) *Jean Tingley*

Jean Tingley, 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)