



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11020
Order LR11-24**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Daniel Mosher against
Orders LD11-176 and LD11-177 issued by the
Director of Residential Rental Property dated
July 22, 2011

BEFORE THE COMMISSION
on Tuesday, the 16th day of August, 2011.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal, under
**Section 25 of the Rental of Residential
Property Act, by Daniel Mosher against
Orders LD11-176 and LD11-177 issued by the
Director of Residential Rental Property dated
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BACKGROUND

On July 29, 2011 the Commission received a Notice of Appeal filed by Daniel Mosher (the Appellant). The Appellant appealed Orders LD11-176 and LD11-177 issued by the Office of the Director of Residential Rental Property (the Director) on July 22, 2011.

By way of background, on July 6, 2011, Dobro Holdings Inc. (the Respondent) filed with the Director an Application by Lessor for an Order (pursuant to Section 13(3) of the Rental of Residential Property Act).

The matter was heard by the Director on July 21, 2011. In Order LD11-176 the Director ordered that:

“The rental agreement between the lessor and the lessee for the residential premises is hereby terminated as of 12:00 midnight, July 31, 2011. The lessee shall vacate the residential premises on or before 12:00 midnight, July 31, 2011.”

The Commission heard the appeal on August 15, 2011. The Appellant was present. The Respondent was represented by Leigh Ogg of PEI Apartments Inc.

EVIDENCE

The Appellant testified that the Respondent has always tolerated late payment and provides this tolerance to a number of their tenants. The Appellant stated that he always ultimately paid his rent.

The Respondent agreed that it is their practice to tolerate late payment of rent and they are still giving late payment privileges to others.

The Respondent stated that the rent for August, 2011 remains outstanding. The Appellant agreed with this statement.

DECISION

The evidence shows the Appellant has been habitually late with rent payments and this is documented by the number of Form 4's issued to the Appellant over the term of his lease agreement.

The Commission has heard that the Respondent has tolerated late payment and continues to do so for other tenants; however, the toleration practice ended for the Appellant when the Respondent filed the Application by Lessor for an Order for termination due to habitual lateness to be effective on July 26, 2011.

The Commission considers that the Appellant should have realized that the Respondent's tolerance for late payment was at an end because the Appellant had participated in the hearing on July 21, 2011 with the Director. This being said, the Appellant still had not paid the August rent, which was due on August 1, 2011, at the time of the August 15, 2011 hearing before the Commission. Therefore it appears to the Commission that the habitual lateness practice of the Appellant has not ended.

The Commission confirms the Director's Order LD11-176 with the following amendments:

The Commission hereby terminates the rental agreement between the parties for the residential premises located at 90 Water Street, Apartment #3, Charlottetown, Prince Edward Island, as of 12:00 noon on August 18, 2011 and the Appellant shall vacate the residential premises on or before 12:00 noon August 18, 2011. However, if rent for August, 2011 has been paid in full by 12:00 noon August 18, 2011, the rental agreement shall terminate and the residential premises be vacated on or before 12:00 midnight August 31, 2011.

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 Commission hereby terminates the rental agreement between the parties for the residential premises located at 90 Water Street, Apartment #3, Charlottetown, Prince Edward Island as of 12:00 noon on August 18, 2011 and the Appellant shall vacate the residential premises on or before 12:00 noon August 18, 2011. However, if rent for August, 2011 has been paid in full by 12:00 noon August 18, 2011, the rental agreement shall terminate and the residential premises be vacated on or before 12:00 midnight August 31, 2011.

DATED at Charlottetown, Prince Edward Island, this 16th day of August, 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)