



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11023
Order LR11-26**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Matthew Thomson against
Order LD11-190 issued by the Director of
Residential Rental Property dated August 9,
2011

BEFORE THE COMMISSION
on Monday, the 29th day of August, 2011.

John Broderick, Commissioner
Leonard Gallant, 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 Matthew Thomson against
Order LD11-190 issued by the Director of
Residential Rental Property dated August 9,
2011**

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BACKGROUND

On August 11, 2011 the Commission received a Notice of Appeal filed by Matthew Thomson (the Appellant). The Appellant appealed Order LD11-190 issued by the Director of Residential Rental Property (the Director) on August 9, 2011.

By way of background, on July 15, 2011 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination dated July 15, 2011 to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated July 5, 2011 signed by Ed Keunecke (the Respondent).

The matter was initially heard by the Director on August 5, 2011. In Order LD11-190 the Director terminated the rental agreement between the parties as of August 12, 2011 and ordered the Appellant to vacate the premises on or before said date.

The Commission heard this appeal on August 22, 2011. The Appellant was present and Gary MacCallum appeared as witness for the Appellant. The Respondent was represented by Larry Dixon.

EVIDENCE

The Appellant testified as to the events set forth in the Director's Order LD11-190 and indicated that the fire alarm in the building goes off quite frequently and therefore he tends to ignore the alarm.

The Appellant also testified that this was an isolated incident and that it should not be cause for such a drastic measure as eviction.

The Respondent stated that he is concerned for the safety of other tenants. The fire alarm was going off for approximately three hours and the Appellant did not wake up. There is a possibility of this happening again; therefore, it is endangering other tenants.

DECISION

The Commission allows the appeal and reverses the decision of the Director to dismiss the Application by Lessee to Set Aside the Notice of Termination and validate the Notice of Termination dated July 5, 2011. The Appellant (the lessee) is allowed to remain in the premises.

The Commission heard evidence from the Appellant, confirmed by the Appellant's witness and undisputed by the Respondent, that the fire alarm rings quite frequently.

The Commission is concerned about a fire alarm system that is not functioning properly. The Commission considers this to be a threat to the safety of all tenants.

Further, the Commission heard that the alarm on the night in question was ringing for approximately three hours before 911 was finally called. It appears to the Commission that the tenants have become so accustomed to hearing the fire alarm that they do not respond.

The Commission strongly recommends that if the Respondent is concerned for tenants' safety then he have the fire alarm system in the building professionally inspected and do whatever is required to put it into good working order.

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 LD11-190 of the Director of Residential Rental Property, dated August 9, 2011, is hereby reversed.**
3. **The Appellant may remain in the premises.**

DATED at Charlottetown, Prince Edward Island, this **29th** day of **August**, **2011**.

BY THE COMMISSION:

(Sgd. John Broderick)

John Broderick, Commissioner

(Sgd. Leonard Gallant)

Leonard Gallant, 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)