



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LR11033

Order LR12-01

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Jane McNeil against Order
LD11-312 of the Director of Residential
Rental Property, dated December 2, 2011

BEFORE THE COMMISSION
on Friday, the 6th day of January, 2012.

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 Jane McNeil against Order
LD11-312 of the Director of Residential
Rental Property, dated December 2, 2011**

Order

On December 9, 2011 the Commission received a Notice of Appeal dated December 9, 2011 from Jane McNeil (the Appellant) requesting an appeal of Order LD11-312 dated December 2, 2011, said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on November 14, 2011 Sarah McConnachie (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated November 14, 2011.

The matter was heard by the Director on November 25, 2011. In Order LD11-312 the Director terminated the rental agreement between the Appellant and the Respondent as of 12:00 midnight, November 30, 2011.

The Commission heard this appeal on December 16, 2011. The Appellant was present. The Respondent was also present. David Speare appeared as a witness for the Respondent.

EVIDENCE

The Appellant read into the record a three page prepared statement, which was filed with the Commission as Exhibit E-11. The Appellant told the Commission that she has lived in the residential premises during previous winters. The Appellant submitted that the residential premises is a nine year old house which can be adequately heated at reasonable cost in the winter. The Appellant submitted that there was a written rental agreement for the period August 2011 to August 2012 and this agreement did not contain any provision for early termination.

The Respondent submitted that she first noticed heating difficulties in the residential premises on October 7, 2011. She noted that the drafts became worse as the weather became colder. She requested an early termination of the rental agreement because of the drafts and difficulty in heating the residential premises.

David Speare is a professor at the University of Prince Edward Island. In the summer of 2011, the Respondent, a then incoming graduate student living in Ontario, asked Dr. Speare if he could make some inquiries concerning the residential premises as she was considering renting the premises for the upcoming year. Dr. Speare and his wife viewed the residential premises and had concerns as to its suitability for winter use. Dr. Speare stated that he expressed these concerns to the Appellant and the Appellant assured him that if the Respondent was not happy with the residential premises, she could leave. Dr. Speare informed the Respondent of his concerns but recommended the residential premises given the Appellant's assurance.

The Commission notes Exhibit E-7, an email sent by Dr. Speare to the Appellant dated November 9, 2011. Exhibit E-7 sets out Dr. Speare's initial concerns, his recollection of the Appellant's response and his understanding of the Respondent's difficulties with the residential premises.

DECISION

The Commission hereby denies the appeal and affirms the decision of the Director in Order LD11-312 to terminate the rental agreement effective as of 12:00 midnight, November 30, 2011.

The Commission finds that Dr. Speare is a very credible and objective witness.

The Commission has the benefit of the photographs of the residential premises on file in Exhibit E-3 and the November 17, 2011 observations and recommendations provided by Jack Mallard, Environmental Health Officer as Exhibit E-5. The Commission finds that the residential premises is best characterized, within the context of the climate of Prince Edward Island, as a three season residential dwelling. The Commission finds that the evidence supports a determination that Statutory Condition 6.1 was contravened with the approach of winter. On this basis, the Commission denies the appeal and affirms the Director's findings and decision contained in Order LD11-312.

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. Order LD11-312 shall remain in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this **6th** day of **January**,
2012.

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)