



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12003  
Order LR12-03**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property, by Nancy Riley aka Nancy Wood  
against Order LD12-029 of the Director of  
Residential Rental Property, dated January  
27, 2012

**BEFORE THE COMMISSION**  
on Thursday, the 9th day of February, 2012.

Allan Rankin, Vice-Chair  
Ferne MacPhail, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

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Commission Administrator  
Land, Corporate and Appellate Services Division

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## BACKGROUND

On February 1, 2012 the Commission received a Notice of Appeal dated February 1, 2012 from Nancy Riley (the Appellant) requesting an appeal of Order LD12-029 dated January 27, 2012, said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on January 5, 2012 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated January 3, 2012 signed by Keir MacLeod (the Respondent).

The matter was heard by the Director on January 19, 2012. During the hearing there was discussion regarding the legal name of the Appellant which resulted in Order LD12-029 referring to the Appellant as “*Nancy Riley aka Nancy Wood*”.

Order LD12-029 states, in part:

**“IT IS THEREFORE ORDERED THAT:**

...

*(4) The rental agreement between the lessee and the lessor for the residential premises is hereby terminated as of midnight, January 31, 2012. The lessee must vacate the residential premises on or before this time and date.”*

The Commission heard this appeal on February 8, 2012. Both the Appellant and Respondent were present and testified. Debra Gallant testified for the Respondent.

## EVIDENCE

The Appellant acknowledged that she has not yet paid rent for the months of January and February. The Appellant attributes the odour in the residential premises to the use of vinegar throughout the residential premises as a cleaning agent. The Appellant submitted that the carpet stains were caused by pets belonging to previous tenants.

The Respondent testified that the Appellant had a dog. He received complaints from neighbours about odours. He inspected the residential premises and described the odour as “atrocious”. The Respondent contacted Environmental Health and the Environmental Health Officers conducted an inspection on February 3, 2012.

Ms. Gallant testified that the odour was “extreme” and she left the residential premises after “not even two minutes”.

The Commission notes the February 3, 2012 report filed by Jack Mallard and Kelly Hughes, Environmental Health Officers. The Commission accepts this report and finds that this report establishes, on the civil standard of a balance of probabilities, that:

- the odour was likely sufficiently strong to emanate into other units in the same building, and
- the odour was caused by the Appellant’s dog.

Section 6, Statutory Condition 4 of the **Rental of Residential Property Act** (the **Act**) reads as follows:

*6. 4. Obligation of the Lessee*

*The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.*

Subsection 13(1) of the **Act** reads as follows:

*13. (1) Where a lessee fails to pay rent in accordance with the rental agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.*

Subsection 14(1)(a) of the **Act** provides that:

*14. (1) The lessor may also serve a notice of termination upon the lessee where*

*(a) statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;*

The Commission finds that the documented condition of the floors and the odour in the residential premises established that the Appellant was in breach of her obligation under Statutory Condition 4; that is to say, “the ordinary cleanliness of the interior of the premises”.

Based on a finding that the Appellant failed to pay rent for the month of January 2012 and that she was in breach of Statutory Condition 4, the Commission denies this appeal, concurs with the reasoning set out in the Director’s Order and upholds said decision of the Director in Order LD12-029.

**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. Order LD12-029 shall remain in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 9th day of February, 2012.

**BY THE COMMISSION:**

(sgd. Allan Rankin)

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Allan Rankin, Vice-Chair

(sgd. Ferne MacPhail)

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Ferne MacPhail, Commissioner

(sgd. Jean Tingley)

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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)