



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12009
Order LR12-12**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Lisa Whalen against Order
LD12-084 dated March 28, 2012 issued by the
Director of Residential Rental Property

BEFORE THE COMMISSION
on Tuesday, the 10th day of April, 2012.

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 Lisa Whalen against Order
LD12-084 dated March 28, 2012 issued by the
Director of Residential Rental Property

Order

BACKGROUND

On March 29, 2012 the Commission received a Notice of Appeal dated the same date from Lisa Whalen (the Appellant) requesting an appeal of Order LD12-084 dated March 28, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on March 8, 2012 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination dated March 8, 2012 to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement signed by Cindy Deacon (Ms. Deacon) dated March 1, 2012.

The matter was heard by the Director on March 21, 2012. In Order LD12-084 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination is denied.*
- 2. The Notice of Termination dated March 1, 2012 and extended to be effective April 1, 2012 is valid.*
- 3. The rental agreement between the lessee and the lessors for the residential premises is hereby terminated as of midnight, April 1, 2012. The lessee must vacate the residential premises on or before that time and date.”*

The appeal was heard by the Commission on April 10, 2012. The Appellant was present at the hearing. Ms. Deacon was also present.

EVIDENCE

The Appellant acknowledged that she knew the apartment was a non-smoking apartment. The Appellant requests that she be able to stay in the apartment until April 30, 2012.

Ms. Deacon advised the Commission that the Appellant has repeatedly permitted a guest to smoke in the apartment. Ms. Deacon is concerned for the safety of the other tenants and has issued a trespass notice against this guest. In spite of the trespass notice, this guest has appeared at the apartment again and a summons was issued.

DECISION

The Commission denies the appeal and upholds the decision of the Director. The Commission finds that the Appellant breached Statutory Condition 6.3 by repeatedly allowing the entrance of a guest who interferes with the quiet enjoyment of other tenants. Pursuant to section 14(1)(a) of the Act, the rental agreement may be terminated for a breach of such statutory condition. The Commission finds that the circumstances warrant an early termination of the rental agreement on such basis.

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. Director's Order LD12-084 is hereby confirmed in its entirety.

DATED at Charlottetown, Prince Edward Island, this **10th** day of **April**, 2012.

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)