



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12017  
Order LR12-17**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, by Anne Tierney and William  
Bevins against Orders LD12-187 dated July  
23, 2012 and LD12-196 dated August 2, 2012  
issued by the Director of Residential Rental  
Property.

**BEFORE THE COMMISSION**

on Monday, the 27th day of August, 2012.

John Broderick, Commissioner  
Michael Campbell, 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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Section 25 of the Rental of Residential  
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## BACKGROUND

On August 9, 2012 the Commission received a Notice of Appeal dated the same date from Anne Tierney and William Bevins (the Appellants) requesting an appeal of Order LD12-187 dated July 23, 2012 and Order LD12-196 dated August 2, 2012 said Orders issued by the Director of Residential Rental Property (the Director).

By way of background, on July 6, 2012 the Appellants filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination dated the same day to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement signed by G. DesRoches on behalf of A & M Rentals (the Respondent) dated July 1, 2012.

The matter was heard by the Director on July 17, 2012. In Order LD12-187 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessees application to set aside the Notice of Termination is denied.*
- 2. The Notice of Termination dated July 1, 2012 to be effective July 31, 2012 is valid.*

*NOTE: Where the lessees fail to comply with this Order the lessor may make application for an Order that possession of the residential premises be surrendered to the lessor and directing the sheriff to put the lessor in possession of the residential premises.”*

The Respondent made a subsequent application on August 1, 2012 to the Director requesting an order for possession pursuant to Order LD12-187. In Order 12-196 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon, Friday, August 3, 2012.”*

The Appeal was heard by the Commission on August 14, 2012. The Appellants were present. The Respondent was represented by Garry DesRoches.

## **EVIDENCE**

The Appellants referred to the various documents on file. The Appellants read into the record much of Exhibit E-23, various recently dated notes, and referred to Exhibit E-24, an August 9, 2012 letter from A. Paul Smith, Chief of Police.

Mr. DesRoches told the Commission he “was not here to take sides”. A group of tenants presented him with a complaint and he had to act on it.

## **DECISION**

In the Commission’s view, some of the evidence presented by each party is very difficult to believe. However, Exhibit E-24 injects objectivity and credibility into the body of evidence before the Commission. From Exhibit E-24, it is apparent that the written statement of one of the complaining tenants was either greatly exaggerated or an outright falsehood. The complaining tenant stated in writing that she had witnessed one of the Appellants having engaged in an illegal activity and this tenant went on to state in writing that she reported such activity to the police. However, Chief Smith’s letter notes that there were “no specific reports” filed with Charlottetown Police Services on that alleged illegal activity. In the Commission’s view, this statement by this particular complaining tenant tends to call into question the reliability of the written statement, and, given the similarity between the various written statements of all the complaining tenants, the other statements as well. Further, the Commission had the opportunity to assess the credibility of the Appellants as witnesses while the Respondent did not produce the complainants as witnesses. In effect, the Commission has on the one hand the sworn testimony of the Appellants; while on the other hand, some unsworn written statements from other tenants are part of the record.

Mr. DesRoches, by his own admission, merely carried forward the complaints of the other tenants. It appears to the Commission that the Respondent did not attempt to get to the bottom of the other tenants’ complaints and allegations to determine whether they were true, or whether they were, as claimed by the Appellants, malicious. The Respondent did not provide any further evidence at the hearing to support a termination of the rental agreement.

While the Commission is of the view that the Appellants are prone to exaggeration and misinterpretation of events, there does seem to be some merit to the theory of the Appellants that at least one of the complainants had a vendetta against them.

Based on the civil standard of a balance of probabilities, the Commission hereby allows the appeal, sets aside the Notice of Termination and reverses the Order of the Director.

That said, the Commission is mindful that the practice of the Appellants repeatedly reporting the actions of others to the police could be viewed as harassment and an interference with the right of quiet enjoyment. Accordingly, it may be prudent for the Appellants to concentrate on being good tenants themselves rather than constantly reporting perceived or real violations of others.

**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 allowed.
2. The Notice of Termination is hereby set aside and the Director's Orders LD12-187 and LD12-196 are hereby reversed.

**DATED** at Charlottetown, Prince Edward Island, this **27th** day of **August**, 2012.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. Michael Campbell)

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Michael Campbell, 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)