



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12014  
Order LR12-18**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, by Khitam Taha against Order  
LD12-165 dated July 3, 2012 issued by the  
Director of Residential Rental Property

**BEFORE THE COMMISSION**  
on Wednesday, the 12th day of September,  
2012.

John Broderick, Commissioner  
Ferne MacPhail, Commissioner  
Peter McCloskey, 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 Khitam Taha against Order  
LD12-165 dated July 3, 2012 issued by the  
Director of Residential Rental Property

---

# Order

---

## BACKGROUND

On July 20, 2012 the Commission received a Notice of Appeal dated July 18, 2012 from Khitam Taha (the Appellant) requesting an appeal of Order LD12-165 dated July 3, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on May 23, 2012 the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated May 23, 2012 requesting an inspection of the rental premises and an order to authorize the termination of the rental agreement made between the Appellant and Bevan Enterprise Inc. (the Respondent).

The matter was heard by the Director on June 5, 2012. In Order LD12-165 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

*1. The lessee’s application to terminate the rental agreement is dismissed.”*

The appeal hearing commenced before the Commission on August 1, 2012. At the commencement of the hearing, it was discovered that the Notice of Appeal Hearing was inadvertently mailed to the wrong address. As the Appellants were not present, the hearing was adjourned without date.

Subsequently, the hearing was re-scheduled to August 13, 2012. The Appellant was present with Sufian Taha (Mr. Taha), Linda Deschenes (Ms. Deschenes) and Rachel Grey (Ms. Grey) providing testimony on her behalf. Wayne Bevan and Betty Morrison represented the Respondent.

## EVIDENCE

The Appellant filed three new exhibits at the hearing. Exhibit E-27 is a letter from Mr. Taha. Exhibit E-28 is a letter from Ms. Deschene. Exhibit E-29 is a letter from Ms. Grey.

The Appellant provided the Commission with detailed testimony at the hearing. In summary, the Appellant testified that she felt very unwell while she lived in the apartment. Her doctor recommended that she move. Part way through the term of the rental agreement, her roommate left without providing her any notice. The roommate had, however, informed the Respondent that she was leaving. There were also issues with parking and unpleasant odours in the apartment building. The Appellant gave the Respondent verbal notice in March 2012 that she would be moving out of the apartment and she moved out on May 17, 2012. During the month of May 2012 the Appellant was writing exams and the Respondent inspected her apartment three or four times that week.

The Respondent's representatives told the Commission that the rental agreement was signed September 15, 2011 with the tenancy to begin on October 1, 2011 and end on September 30, 2012. The Appellant did not provide written notice to vacate the apartment, did not pay rent for the month of May and did not return the keys until the June 5, 2012 hearing before the Director.

The Respondent's representatives asked the Appellant to fill out a written Notice to Vacate; however the Appellant did not do so. The frequent inspections occurred during May because the Respondent was attempting to discover whether or not the apartment was empty in the absence of an express move out date.

The Commission, after considering all the evidence and the requirements of the **Rental of Residential Property Act** (the **Act**), denies the appeal for the reasons that follow.

The Appellant seeks to terminate a one year rental agreement. The **Act** does allow for the possibility of termination and sets out a specific process to be followed and specific circumstances where termination may be possible. An integral part of the process for termination is a requirement, set out in section 18 of the **Act**, that a lessor or lessee give notice to terminate in **writing**. However, in spite of requests to do so from the Respondent, the Appellant has failed to give written notice of termination.

The Appellant did, however, file a May 23, 2012 Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement with the Director, seeking an order to authorize the termination of the rental agreement. The Commission finds that, based on the facts of this case, for early termination to be possible, the Appellant must establish, on the civil standard of a balance of probabilities, that there was a serious breach on the part of the Respondent of its obligation under section 6.1 of the **Act** to "keep the premises in a good state of repair and fit for habitation" and comply with "standards of health, safety or housing".

The Commission agrees with the Director that the evidence submitted by the Appellant fails to substantiate her claim that the Respondent breached its obligation under the **Act** to keep the premises in good repair and fit for habitation.

Accordingly, the appeal is denied and Director's Order LD12-165 is hereby confirmed.

**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 LD12-165 is hereby confirmed.

**DATED** at Charlottetown, Prince Edward Island, this **12th** day of **September, 2012**.

**BY THE COMMISSION:**

(sgd. John Broderick)

\_\_\_\_\_  
John Broderick, Commissioner

(sgd. Ferne MacPhail)

\_\_\_\_\_  
Ferne MacPhail, Commissioner

(sgd. Peter McCloskey)

\_\_\_\_\_  
Peter McCloskey, 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)