



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12038  
Order LR12-34**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, by Barbara Doyle against Order  
LD12-336 dated November 28, 2012 issued  
by the Director of Residential Rental  
Property.

**BEFORE THE COMMISSION**

on Tuesday, the 18th day of December, 2012.

John Broderick, Commissioner  
Michael Campbell, Commissioner  
Peter McCloskey, 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

**IN THE MATTER** of an appeal under Section 25 of the Rental of Residential Property Act, by Barbara Doyle against Order LD12-336 dated November 28, 2012 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On November 29, 2012 the Commission received a Notice of Appeal dated the same date signed by Reg Doyle on behalf of a lessee, Barbara Doyle (the Appellant) requesting an appeal of Order LD12-336 dated November 28, 2012 issued by the Director of Residential Rental Property (the Director).

By way of background, on September 28, 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 September 18, 2012 signed by a lessor, Bevan Enterprises Inc. (the Respondent).

The matter was heard by the Director on October 12, 2012 and in Order LD12-336 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessee’s application to set aside the Notice of Termination dated September 18, 2012 to be effective October 18, 2012 is not approved.*
- 2. The Notice of Termination dated September 18, 2012 to be effective October 18, 2012 is valid and the rental agreement between the parties is terminated effective November 30, 2012.*
- 3. If the lessee does not vacate the premises in accordance with Paragraph 2 of this Order, the lessor may apply without further notice to the lessee for an Order directing the Sheriff to put the lessor in possession of the premises.”*

The hearing was held by the Commission on December 17, 2012. Reg Doyle (Mr. Doyle) appeared on behalf of the Appellant. The Respondent was represented by Wayne Bevan and Betty Morrison.

## EVIDENCE

Mr. Doyle read into the record a prepared statement which formed part of Exhibit E-21. He disputed some of the facts referred to in Director's Order LD12-336. Mr. Doyle emphasized that there is a major difference between a lack of understanding and a lack of knowledge. He noted that the Appellant did not have any knowledge of the matter when it was first discovered but that once she had knowledge and information, she understood the matter.

The Respondent's representatives emphasized that they only sought to terminate the rental agreement once it became apparent that the Appellant was "non-compliant" with the process required by the professionals retained by the Respondent. The Respondent's representatives also expressed frustration with the length of time that the Director took to make her decision.

## DECISION

The Commission finds that this matter presents a very difficult case which likely was at least part of the reason why it took the Director considerable time to issue her Order.

The Commission is sympathetic to both parties. This is a most unfortunate situation for both a landlord and a tenant. The Commission is of the view that the Appellant genuinely did not know of the problem until it was brought to her attention.

However, what is germane in this appeal is not the Appellant's knowledge or lack of understanding before the Respondent informed her of the problem but what the Appellant did or did not do after she was fully informed of the problem.

Unfortunately, the Appellant was not present to testify. Mr. Doyle has assisted the Appellant at great lengths as an advocate and the Commission appreciates his endeavours to do so. However, Mr. Doyle apparently did not personally observe what efforts the Appellant made to deal with the situation in her apartment and as such, his testimony amounts to hearsay with respect to much of what the Appellant may have, or may not have, done to comply with the professional treatment plan.

In this type of difficult matter, there is a heavy onus on the Respondent as a lessor to provide the necessary professional treatment for the residential premises on a full and timely basis. In the Commission's view, the Respondent has done just that and at great expense. However, there is also a heavy onus on the Appellant as a tenant to fully comply with the specific directions provided by the professionals. Based on the testimony presented at the hearing, the Commission finds on the civil standard of the balance of probabilities that the Appellant did not fully comply with the detailed directives set out by the professionals. On this basis, the Commission agrees with the decision of the Director, albeit for somewhat different reasons.

Accordingly, the appeal is denied and Order LD12-336 is confirmed, subject to a revision of the termination date of the rental agreement. In consideration for the difficult situation faced by the Appellant and the need for an orderly, well planned departure which is in the best interests of both parties, the Commission orders that the rental agreement termination date be effective January 7, 2013.

**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 LD12-336 is hereby confirmed, subject to a revision of the termination date of the rental agreement. The new termination date is hereby ordered to be January 7, 2013.

**DATED** at Charlottetown, Prince Edward Island, this **18th** day of **December, 2012**.

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. Michael Campbell)

Michael Campbell, Commissioner

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(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)