



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12037  
Order LR12-36**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act by Keir MacLeod against Order  
LD12-327 dated November 23, 2012 issued  
by the Director of Residential Rental  
Property.

**BEFORE THE COMMISSION**

on Friday, the 21st day of December, 2012.

Allan Rankin, Vice-Chair  
Ferne MacPhail, 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 Keir MacLeod against Order LD12-327 dated November 23, 2012 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On November 27, 2012 the Commission received a Notice of Appeal dated the same date from a lessor, Keir MacLeod (the Appellant) requesting an appeal of Order LD12-327 dated November 23, 2012 issued by the Director of Residential Rental Property (the Director).

By way of background, on November 1, 2012 a lessee, Maigan Perry (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

The matter was heard by the Director on November 9, 2012 and in Order LD-12-327 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessor shall return the lessee’s belongings listed on Schedule A annexed to this order or shall allow the lessee to retrieve the remainder of her belongings from 18 Cannon Line Road or from any other location where the lessor is withholding the lessee’s belongings **forthwith**.*
- 2. If the lessee has not received her belongings by Tuesday, November 27, 2012 at 12:00 noon, the Sheriff is directed to take possession of the items listed in Schedule “A” and return them to the lessee.”*

The Commission heard this matter on December 12, 2012. The Appellant and the Respondent were both present. Michelle Martell testified for the Appellant and Maynard Arsenault testified for the Respondent. Susan Jefferson, Commission Administrator, was called by the Commission panel in order to testify as to what she had been told by the Respondent.

## EVIDENCE

The Appellant filed a written statement from two men who helped to move the Respondent's belongings from the premises (Exhibit E-9). The Appellant also filed Exhibit E-10, which consists of an October 2, 2012 receipt and an October 16, 2012 receipt from the new tenants. The Appellant submits that these exhibits establish that the belongings were removed on October 16, 2012 not October 15, 2012 as claimed by the Respondent. The Appellant submits that he is holding the Respondent's belongings until he is reimbursed for the cost of moving and storing said belongings. The Appellant also testified that he had to get the belongings out so he could clean the premises and get the new tenants in.

Ms. Martell testified that the Respondent arrived at the premises on October 16, 2012. Ms. Martell then informed her that the locks had been changed and her belongings removed. Ms. Martell testified that she assisted in the removal of the Respondent's belongings on October 16, 2012. Ms. Martell stated that the Respondent and Mr. Arsenault did not have a truck there on the 15<sup>th</sup> of October. On the 16<sup>th</sup> when she told them that the locks were changed, they got in a car and left.

The Respondent testified that she went to the premises on the morning of October 15, 2012 and was advised by Ms. Martell that the locks were changed and her belongings removed. The Respondent testified that she then proceeded to the Commission's offices and spoke with Ms. Jefferson that morning. The Respondent also advised that she spoke with Catherine Flanagan, Director of Residential Rental Property, that same day.

Mr. Arsenault testified that on October 15, 2012 he arrived at the premises with a truck. He looked at the lock and it appeared that it had been changed. As he did not have a key with him, he did not try the lock. He also then proceeded to the Commission's offices to speak with staff.

Ms. Jefferson testified that she had an in person conversation with the Respondent on October 15, 2012. At that point, Commission Order LR12-26 was being prepared by the Commission panel. Ms. Jefferson stated that she was informed by the Respondent that she was locked out of the premises.

## DECISION

The Commission denies this appeal and confirms the Director's Order LD12-327 in its entirety for the reasons that follow.

Ms. Martell appeared to be confused in her testimony on another date issue. In light of Ms. Martell's confusion between November 1 and October 1, it is certainly possible that she was confused between October 15 and October 16 and as such, the Commission places reduced evidentiary weight on Ms. Martell's testimony with respect to the actual date the Appellant put himself in possession of the residential premises.

The Respondent alleges that she was told by Ms. Martell on October 15 that her belongings had been removed and the locks changed. The Respondent states that she then went to the Commission's offices to inform staff of this. Commission staff testified that the Respondent had in fact informed Commission staff of this allegation on October 15, 2012, prior to the issuance of Order LR12-26. The Commission finds that the Respondent's visit to the Commission's offices immediately following her purported visit to the residential premises tends to lend some added credibility to her position on this issue.

The Appellant relies on Exhibit E-9 to establish that the Respondent's belongings were removed on the morning of October 16, 2012. However, Exhibit E-9 is not a sworn statement or affidavit. Neither signatory was present at the hearing to offer testimony under oath or affirmation in support of E-9 and to be subject to cross-examination from the Respondent and questioning from the Commission. As such, the Commission cannot give Exhibit E-9 the same evidentiary weight of a sworn or affirmed written statement or oral testimony.

As often stated, the evidentiary test in appeals to the Commission is that of the civil standard of a balance of probabilities.

The Commission finds that the evidence of the Respondent and her witness is overall somewhat more credible than that of the Appellant and his witness. Where the evidentiary test is that of a balance of probabilities, somewhat more credible is sufficient for the Commission to determine a subject matter in dispute.

However, there is a further factor to consider. The Commission wishes to point out that the original Director's Order LD12-273, upheld on appeal by Commission Order LR12-26, stated the following:

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, October 12, 2012.*

Emphasis added.

Director's Order LD12-273 was issued on October 10, 2012. On October 11, 2012, the Respondent in the present appeal filed an appeal of Order LD12-273. On October 15, 2012, the Commission issued Order LR12-26 denying the appeal filed on October 11, 2012 and confirming Order LD12-273.

While there is a certain element of uncertainty as to whether the locks were changed and the Respondent's belongings were moved on October 15 or 16, it is clear that the Appellant on the present appeal did not utilize the services of the Sheriff. Rather, the Appellant opted to put himself in possession of the residential premises.

There is a practical reason for lessors to follow a Director's order and utilize the services of the Sheriff. The Sheriff is an independent and impartial professional who keeps accurate records. Had the Appellant in the present appeal utilized the services of the Sheriff, the Commission would, in all likelihood, have had impartial, objective and credible evidence of the actual date the Appellant was put in possession.

For the above reasons, this appeal is denied and Director's Order LD12-327 is hereby confirmed in its entirety.

**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 LD12-327 is hereby confirmed in its entirety.

**DATED** at Charlottetown, Prince Edward Island, this **21st** day of December, 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. Peter McCloskey)  
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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)