



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14007
Order LR14-08**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, made by Robert Marshello
against Order LD14-066 dated March 5, 2014
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Tuesday, the 25th day of March, 2014.

Maurice Rodgerson, Chair
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, made by Robert Marshello against Order LD14-066 dated March 5, 2014 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On March 11, 2014 the Commission received a Notice of Appeal dated the same dated signed by a lessee, Robert Marshello (the “Appellant”) requesting an appeal of Order LD14-066 dated March 5, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on February 5, 2014 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination dated the same date together with a Form 4 – Notice of Termination by Lessor of Rental Agreement issued by a lessor, PEI Housing Corporation (the “Respondent”) dated February 4, 2014.

The matter was heard by the Director on February 25, 2014 and in Order LD14-066 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 by Lessor of Rental Agreement dated February 4, 2014 to be effective March 6, 2014 is valid.**
- 3. The rental agreement between the lessee and the lessor for the residential premises is hereby terminated as of 12:00 midnight, March 31, 2014. The lessee shall vacate the residential premises on or before this time and date.”**

The matter was heard before the Commission on March 25, 2014. The Appellant was present. Kim LeRoux was present with the Appellant and Mr. LeRoux testified on the Appellant’s behalf. The Respondent was represented by Chris Reeves and Lori Johnston.

EVIDENCE

The Appellant told the Commission that his friends have been helping him deal with the situation and he has hired a cleaner to help him keep his apartment clean. He has been in contact with home care and they hope to be able to visit him in two weeks' time. The Appellant stated that he is only able to carry a light garbage bag as his legs are weak and he needs to be able to grab the hand rail with his free hand.

Mr. LeRoux provided background information which was very helpful. Mr. LeRoux asked the Commission to give the Appellant one more chance.

Lori Johnston and Chris Reeves told the Commission about the efforts that the Respondent has made since 2011 to help the Appellant. Ms. Johnston expressed her opinion that the Appellant needs to move into some form of assisted living.

DECISION

The Commission denies the appeal and upholds the decision of the Director for the reasons that follow.

Having reviewed the evidence on file and with the benefit of hearing the testimony of the parties, the Commission finds that the Respondent went to great lengths over the years to help the Appellant remain in his apartment. The Commission commends the Respondent for their efforts in this regard and commends Mr. LeRoux for his help and support for the Appellant.

The Commission agrees with the Director that the rental agreement should be terminated as there is ample evidence to support a finding that there has been a breach of statutory condition 4.

Accordingly, the Commission denies the appeal and upholds the Director's decision, subject to a revision in the termination date.

The Commission recommends, in *obiter*, that the Appellant strongly consider assisted living as the panel members are of the view, based on the evidence, that the Appellant truly needs to live in an assisted living environment.

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, subject to a change in the rental agreement termination date.**
2. **The Commission hereby orders a variation of the rental agreement termination date from March 31, 2014 as ordered by the Director to April 18, 2014. In all other respects, the Director's Order is hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this **25th** day of **March**, 2014.

BY THE COMMISSION:

(sgd. Maurice Rodgerson)

Maurice Rodgerson, Chair

(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)