



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14016
Order LR14-27**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Patti Barrie against
Order LD14-166 issued by the Office of the
Director of Residential Rental Property on
June 2, 2014.

BEFORE THE COMMISSION
on Monday, the 6th day of October, 2014.

John Broderick, Commissioner
Michael Campbell, Commissioner
Jean Tingley, 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, filed by Patti Barrie against Order LD14-166 issued by the Office of the Director of Residential Rental Property on June 2, 2014.

Order

BACKGROUND

On June 11, 2014 the Commission received a Notice of Appeal from a lessee, Patti Barrie (the “Appellant”), requesting an appeal of Order LD14-166 dated June 2, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 7, 2014 the Appellant, filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination together with a Form 4 – Notice of Termination by Lessor of Rental Agreement signed by Vernon Champion on behalf of a lessor, the Alberton Housing Authority (the “Respondent”).

The matter was heard by the Director on May 22, 2014 and in Order LD14-166 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination by Lessor of Rental Agreement is denied.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated May 1, 2014 and extended to be effective on June 1, 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, June 30, 2014. The lessee shall vacate the residential premises on or before this time and date.”*

The matter was heard by the Commission on July 2, 2014. The Appellant was present, testified and was represented by legal counsel, Katherine G. Boyle. Nakia Barrie testified on the Appellant’s behalf. The Respondent was represented by legal counsel, Robert MacNevin. Vernon Champion and Michael King testified on behalf of the Respondent. A neighbour of the Appellant, Patricia Bates, also testified for the Respondent.

EVIDENCE

Counsel for the Appellant submitted that the Appellant at no time impaired the safety or lawful right of the Respondent lessor or of other tenants.

The Appellant testified, denying many of the allegations made against her while acknowledging other actions, such as the posting of pamphlets to trees and the return of a chair by dropping it over the fence.

Nakia Barrie testified that she is the daughter of the Appellant and has lived with her in the past. Nakia Barrie testified as to her observations concerning various incidents that occurred while she was still living with the Appellant.

Counsel for the Respondent called Patricia Bates, who testified as to her observations of the events.

Council for the Respondent called Michael King, Chair of the Respondent Alberton Housing authority. Mr. King testified as to various complaints that were received since 2008.

Council for the Respondent called Vernon Champion who is the project manager for the Respondent Alberton Housing Authority. Mr. Champion told the Commission that he deals with complaints and serves as repairperson for the Respondent's 22 units. He noted that he receives complaints from residents who are not tenants as well as tenants. He noted that Town staff and council members would call him if the Town had concerns about issues with the units.

Both Counsel requested the opportunity to file written submissions and the Commission agreed to this request. Counsel for the Appellant filed her submissions on July 23, 2014. Counsel for the Respondent filed his submissions on August 13, 2014.

DECISION

The Commission allows the appeal for the reasons that follow.

The Commission heard a substantial body of testimony from the various witnesses. While testimony before the Director is not recorded, testimony before the Commission is recorded to facilitate the preparation of a transcript in the event of an appeal to the Court. For the purposes of appeals of Commission decisions under the **Rental of Residential Property Act** (the **Rental Act**), the appellate Court is the Supreme Court of Prince Edward Island.

The Commission has concerns with respect to the written submission filed by the Respondent's legal counsel. In paragraph 12 of page 2 of this submission, Counsel for the Respondent attempts to lead hearsay evidence about events that occurred since the hearing, and attempts to draw a conclusion from this. The Commission agreed to allow both Counsel to file written submissions post hearing; however, the hearing was concluded on July 2, 2014 and any further evidence should only have been provided with the agreement of the Commission. Further, it is not the role of Counsel to relay hearsay evidence. In the event the Commission had agreed to the filing of additional evidence on a "paper" basis, a sworn affidavit would have been appropriate. Post hearing hearsay "evidence" relayed through legal counsel is not appropriate.

The Commission is also concerned with the underlying theme of the written submission of Respondent's counsel, expressed in the following paragraphs:

4. This is an appeal before the Island Regulatory and Appeals Commission, not a trial *di novo*. I submit that the Commission's role in hearing this appeal is similar to a court of law's role on an application for judicial review of a decision from a decision of an administrative body (tribunal).
5. The function of the court on a judicial review is not to have a second hearing of all the material and evidence heard in the first instance, but rather, the court shall show deference to the authority and mandate of the original adjudicator.
6. In Sara Blake, *Administrative Law in Canada*, 3d ed (Toronto: Butterworths, 2001), regarding the scope of judicial review it states:

A court's powers of review are narrow. It does not retry the matter that was decided by the tribunal. A reviewing court is not concerned with the merits of the case before the tribunal nor with the wisdom of the tribunal's decision. Its sole concern is whether the tribunal properly exercised powers conferred on it by statute.

Only the decision of the tribunal is reviewable. The tribunal's reasons for decision may be considered to ascertain whether the decision was arrived at by reviewable error. However, the reasons alone cannot be quashed leaving the decision intact. A person who is content with a tribunal's decision cannot complain about comments made by the tribunal in its reasons. Furthermore, if content with the final decision, a party may not apply for judicial review of an interim hearing.

[footnotes omitted]

In an often cited decision which provides direction to the Commission, *In the matter of Section 14(1) of the Island Regulatory and Appeals Commission Act (Stated Case)*, [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. states for the Court at page 7:

*it becomes apparent that the Legislature contemplated and intended that appeals under the **Planning Act** would take the form of a hearing *de novo* after which IRAC, if it so decided, could substitute its decision for the one appealed. The findings of the person or body appealed from are irrelevant. IRAC must hear and decide the matter anew as if it were the original decision-maker.*

While the *Stated Case* was made in the context of an appeal under the **Planning Act**, the *de novo* nature of appeals under the **Rental Act** was specifically recognized by the first statutory appeal heard by the Supreme Court (Trial Division) [as the Court was then known] under s. 26(2) of the **Rental Act** in *Williams v. Fall & MacDonald* 2005 PESCTD 45:

[2] *The appeal is made pursuant to a statutory right under the Rental of Residential Property Act, R.S.P.E.I. 1988, Cap. R-13.1 (the "Act"), s. 26(2).*

[3] The Director of Residential Rental Property (the "Director") made decisions regarding the security deposit and balance of rent payable on May 6, 2004. Under s.25 of the Act, an appeal of both decisions was made to the Commission. An appeal to the Commission is by way of re-hearing, and in the hearing, the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit, and may make such decision or order as the Director is authorized to make under the Act. Section 26(2) creates a right of appeal to this Court on a question of law only. Under s. 26(3), the rules of court governing appeals apply to an appeal.

Emphasis added by the Commission.

The Commission notes that it is well established that appeals to the Commission are on a hearing *de novo* basis and accordingly, the Commission rejects the argument to the contrary raised by Counsel for the Respondent and supported by a quote from a textbook discussing the scope of judicial review as it applies to a reviewing Court rather than the clear direction of the Courts of Prince Edward Island which very specifically address the appellate role of this Commission.

With respect to the merits of the present appeal, the relevant legislation is contained in section 14.(1)(e) of the **Rental Act** which reads as follows:

14. (1) The lessor may also serve a notice of termination upon the lessee where

...

(e) the safety or other lawful right or interest of the lessor or other lessee in the residential property has been seriously impaired by an act or omission of the lessee or a person permitted in or on the residential property or residential premises by him;

In the written submissions filed by Appellant's Counsel, it is submitted that the actions of the Appellant did not seriously impair the safety or other lawful right of the lessor. Counsel for the Appellant stated in her written submission:

6. When asked under oath Mr. King and Mr. Champion confirmed that they did not believe the safety of the Respondent and its employees had been seriously impaired by the Appellant.

Counsel for the Appellant also submits that none of the various complainants are lessees under the **Rental Act**. Counsel for the Appellant then refers to portions of letters from complainants that make it quite plain that these complainants are homeowners, not tenants. Counsel for the Appellant goes on to state:

35. Testimony given by Mr. King and Mr. Champion further confirmed that none of the individuals who submitted letters are lessees.

While the Appellant may, or may not, have participated in inappropriate conduct toward neighbours, any such determination is beyond the reach of the **Rental Act**, beyond the jurisdiction of the Director and beyond the jurisdiction of the Commission. It might very well be relevant in another forum, under the common law or other legislation, but it is irrelevant under the **Rental Act** and before the Commission.

Based on a review of the evidence, the Commission finds that there is no evidence to support a finding, on the civil standard of a balance of probabilities, that the lessor or other lessees had their safety, or other lawful right or interest seriously impaired by an act or omission of the Appellant or a person permitted in or on the rental premises by the Appellant.

Accordingly, the Commission allows the appeal and reverses the Director's Order.

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 allowed.
2. Director's Order LD14-166 is reversed.
3. The Appellant's May 7, 2014 application to Set Aside a Notice of Termination (Form 6) pursuant to section 16 of the *Rental of Residential Property Act* is allowed.
4. The Commission hereby sets aside the Notice of Termination by Lessor of Rental Agreement (Form 4) dated May 1, 2014.

DATED at Charlottetown, Prince Edward Island, this **6th** day of **October**, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Michael Campbell)

Michael Campbell, Commissioner

(sgd. Jean Tingley)

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)