



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14034
Order LR14-32**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Matthew James
MacDonald and Ian Clark MacDonald against
Order LD14-333 issued by the Office of the
Director of Residential Rental Property on
October 9, 2014.

BEFORE THE COMMISSION
on Tuesday, the 4th day of November, 2014.

John Broderick, Commissioner
Michael Campbell, Commissioner
Leonard Gallant, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

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BACKGROUND

On October 17, 2014 the Commission received a Notice of Appeal from a lessee, Matthew MacDonald on behalf of himself and Ian MacDonald (the “Appellants”), requesting an appeal of Order LD14-333 dated October 9, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 22, 2014 the Appellants filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination, together with a copy of a Form 4 – Notice of Termination by Lessor of Rental Agreement signed by Normand Franks and Susan Franks as representatives of Sandglass Holdings Inc. (the “Respondent”).

The matter was heard by the Director on September 3, 2014 and in Order LD14-333 the Director ordered:

“IT IS THEREFORE ORDERED THAT:

- 1. The lessees’ application to set aside the Notice of Termination is not valid.*
- 2. The Notice of Termination by Lessor of Rental Agreement dated August 14, 2014 to be effective September 14, 2014 is valid.*
- 3. The rental agreement between the lessees and the lessor for the residential premises (mobile home lot) is hereby terminated as of 12:00 midnight, October 20, 2014. The lessees shall remove their mobile home from the residential premises on or before this time and date.”*

The matter was heard by the Commission on November 4, 2014. The Appellants were represented by Matthew MacDonald. The Respondent was represented by Normand and Susan Franks.

EVIDENCE

Mr. MacDonald explained that he has been advised by the Department of Environment, Labour and Justice (Department of Environment) via telephone that the rear site has been successfully remediated and is “cleared”. He is awaiting an additional test for the other site and he has been advised over the telephone that removal of the trailer may not be necessary.

The Respondent’s representatives advised that they do not have any record of any “clean test”. They also note that the Department of Environment advised them in writing that the trailer must be moved.

DECISION

The Commission denies the appeal and uphold Director’s Order LD14-333.

Contained in the file are photographs detailing the attempt at site remediation. Also contained in the file is a medical report outlining the impact on an affected tenant. The Commission is satisfied that the oil spill has seriously impaired the safety and lawful right of other tenants and also the Respondent landlord pursuant to section 14(1)(e) of the *Rental of Residential Property Act*. The Respondent has been directed by the Department of Environment in writing to remove the trailer to allow for complete remediation. While the Appellant claims that the Department of Environment has advised him over the telephone that a removal of the trailer may no longer be necessary, such evidence is not compelling, given the written directive to remove the trailer. If the Appellant wished to persuade the Commission that the Department of Environment has altered its previous stance on the matter, a letter from said Department would have been more compelling.

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 and Order LD14-333 is confirmed.**
2. **The rental agreement between the Appellants (lessees) and the Respondent (lessor) for the residential premises (mobile home lot) is hereby terminated as of 12:00 midnight, November 12, 2014. The Appellants shall remove their mobile home from the residential premises on or before this time and date.**

DATED at Charlottetown, Prince Edward Island, this **4th** day of **November**, **2014**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Michael Campbell)

Michael Campbell, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, 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)