



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14042
Order LR14-34**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act, filed by Lizabeth Fry against Order LD14-348 issued by the Director of Residential Rental Property on the 23rd day of October, 2014.

BEFORE THE COMMISSION
on Wednesday, the 26th day of November, 2014.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act, filed by Lizabeth Fry against Order LD14-348 issued by the Director of Residential Rental Property on the 23rd day of October, 2014.

Order

BACKGROUND

On November 12, 2014 the Commission received a Notice of Appeal from a lessee, Lizabeth Fry (the “Appellant”), requesting an appeal of Order LD14-348 dated October 23, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 6, 2014 a lessor, Trevor Mayne (the “Respondent”) filed with the Director a Form 5 – Application by Lessor For Earlier Termination together with a Form 4 – Notice of Termination by Lessor of Rental Agreement both dated October 6, 2014.

The matter was heard by the Director on October 17, 2014 and in Order LD14-348 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor’s application for earlier termination is not valid.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated October 6, 2014 to be effective on November 6, 2014 is valid.*
- 3. The rental agreement between the lessor and the lessee for the residential premises is hereby terminated as of 12:00 midnight, November 6, 2014. The lessee and all other occupants shall vacate the unit on or before this time and date.*

NOTE: *Where the lessee fails to comply with this Order the lessor may make application without further notice to the lessee for an Order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession of the residential premises.”*

The matter was heard by the Commission on November 26, 2014. Both the Appellant and Respondent were present and each called a witness in support of their position.

EVIDENCE

The Appellant explained the circumstances of the matter to the Commission. The Appellant told the Commission that she has rectified the problem and she wishes to stay in the premises.

The Respondent explained that he had received noise complaints from various neighbours commencing in February 2014 and continuing up to and including October 2014. He acknowledged that it has been quiet during the month of November.

DECISION

The appeal is denied for the reasons that follow.

Section 16 of the ***Rental of Residential Property Act*** reads as follows:

16. (1) A lessee who has received notice of termination for any of the reasons set out in section 13, 14 or 15 may apply to the Director for an order setting aside the notice.

(2) An application under subsection (1) shall be made by a lessee not later than ten days after being served with the notice.

(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.

(4) The lessee shall serve the lessor with a copy of an application of the lessee under subsection (1). 1988,c.58,s.16; 1990,c.53,s.6.

The Appellant did not apply under section 16 of the ***Rental of Residential Property Act*** to have the Form 4 Notice of Termination set aside within the statutory time period, and thus the Appellant has been deemed to have accepted the Notice of Termination on the date specified on the Form 4, which is November 6, 2014.

Accordingly, the Commission upholds the Director's Order and the appeal is denied.

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. **The Commission upholds the termination of the rental agreement as ordered by the Director, subject to a variance in the date the residential premises must be vacated.**
3. **The Appellant (lessee) and all other occupants shall vacate the residential premises located at 8 School Street, Kensington PEI on or before 12:00 midnight December 6, 2014.**

DATED at Charlottetown, Prince Edward Island, this **26th** day of
November, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, 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)