



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14049
Order LR14-38**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Thomas Argon and
Julie Gaudet against Order LD14-399 issued
by the Director of Residential Rental
Property dated November 21, 2014.

BEFORE THE COMMISSION

on Friday, the 19th day of December, 2014.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, filed by Thomas Argon and Julie Gaudet against Order LD14-399 issued by the Director of Residential Rental Property dated November 21, 2014.

Order

BACKGROUND

On November 28, 2014 the Commission received a Notice of Appeal from a lessee, Thomas Argon on behalf of himself and Julie Gaudet (the “Appellants”), requesting an appeal of Order LD14-399 dated November 21, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on November 7, 2014, the Appellants filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination together with Form 4 – Notice of Termination by Lessor of Rental Agreement dated November 1, 2014 signed by the lessor, Carman MacArthur (the “Respondent”).

The matter was heard by the Director on November 20, 2014 and in Order LD14-399 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees’ application to set aside the Notice of Termination by Lessor of Rental Agreement (Form 6) is denied.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated November 1, 2014 to be effective on December 1, 2014 is varied to December 5, 2014.*
- 3. The rental agreement between the lessees and the lessor for the residential premises is hereby terminated as of 12:00 midnight, December 5, 2014. The lessees shall vacate the residential premises on or before this time and date.”*

The matter was heard by the Commission on December 5, 2014. The Appellant Thomas Argon (Mr. Argon) was present. The Respondent was also present.

EVIDENCE

Mr. Argon testified that the noise complaints were attributable to the neighbour in the next apartment. He submitted that the Respondent is mistaken in thinking that the noise is coming from the Appellants.

Mr. Argon stated that he spoke with the other tenants and they were unsure of the source of the noise and disturbance. He noted that the police had attended the next apartment several times in one night.

Mr. Argon acknowledged that Julie Gaudet (Ms. Gaudet) yelled into their apartment when, on one occasion, she was unable to enter their apartment due to the security chain being fastened while Mr. Argon was sleeping.

Mr. Argon stated that he had not received any warnings from the Respondent prior to the filing of the November 1, 2014 Form 4. Mr. Argon submitted that only family and close friends visit the Appellants' apartment. He further submitted that he is not responsible for the noise and submits that the police have not been called to the Appellants' apartment.

The Respondent testified that the tenant in the other apartment had two parties, both of which occurred after the Form 4 was issued to the Appellants. The Respondent expressed concerns about the amount of vehicular traffic pulling up to the building in the early hours of the morning. He noted that the other tenants telephoned him with their concerns but he was unable to obtain statements from them. He submitted that his wife has heard and observed people hanging around who cause her concern. He noted that he had received complaints concerning the other tenant's party, but otherwise no complaints about that tenant. He submitted that the other tenants are clear that the sounds are coming from the Appellants' apartment and they recognize the voices of the Appellants. He noted that the other tenants are used to a quiet building.

DECISION

The Commission allows the appeal for the reasons that follow.

While the Respondent is no doubt sincere about his concerns, the Respondent's evidence is mostly hearsay. None of the tenants or other persons who witnessed the noise and other concerns came forward to testify as to what they saw and heard. There are no letters on file from tenants or other persons outlining their concerns. There is no record on file of a written warning issued to the Appellants prior to the issuance of the Form 4.

The termination of a rental agreement is a serious matter. The onus is on the Respondent to establish, on the civil standard of a balance of probabilities, that there has been a breach of Statutory Condition 3, that is to say that the Appellants, or persons they admit to the premises, have conducted themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees. The Commission finds that the evidence before it at this hearing is not sufficient to warrant a finding that the Appellants have breached Statutory Condition 3.

Accordingly, the appeal is allowed and Director's Order LD14-399 is hereby reversed.

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 LD14-399 is hereby reversed.

DATED at Charlottetown, Prince Edward Island, this **19th** day of **December, 2014**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(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)