



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR15020  
Order LR15-22**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Saveliy Krichevskiy against  
Order LD15-205 issued by the Office of the  
Director of Residential Rental Property dated  
June 16, 2015.

**BEFORE THE COMMISSION**  
on Tuesday, the 18th day of August, 2015.

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

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# Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

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Commission Administrator  
Corporate Services and Appeals

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## BACKGROUND

On July 2, 2015 the Commission received a Notice of Appeal filed by a lessee, Saveliy Krichevskiy (the “Appellant”) appealing Order LD15-205 issued by the Director of Residential Rental Property (the “Director”) dated June 16, 2015.

By way of background, on June 6, 2014 the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy from a lessor, Killam Properties Inc. (the “Respondent”), by way of a finding that rent is owed and an order that an amount to be owed be paid.

A hearing was held before the Director on January 20, 2015. Order LD15-205 dated June 16, 2015 states, in part, as follows:

***“IT IS THEREFORE ORDERED THAT***

*1. The lessee’s application regarding the return of rent is hereby dismissed.”*

A hearing before the Commission was held on July 20, 2015. The Appellant was present and was represented by Joe Byrne. The Respondent was represented by legal counsel Jonathan M. Coady. Wayne Beaton was also present for the Respondent.

## EVIDENCE

The Appellant submitted that the Director’s Order was “not relevant” and resembled Russian justice. He submitted that he has done a comparative analysis of two very similar apartments, and he has been overcharged over \$200.00 per month for the last five years, for a total of over \$12,000. He described the situation as “grossly unfair”. He submitted that the brickwork in the kitchen and skylight are not advantages. He submitted that he is operating a small business out of his apartment and does not wish to move at this time as it would be technically unfeasible and of great expense.

Mr. Byrne submitted that the Director erred in law, as the **Rental of Residential Property Act** (the **Act**) does not exist in a legislative vacuum. He submitted that the Director failed to address the genuineness of the rental contract. He submitted that the Appellant, as a newcomer to Canada, was not familiar with the local rental market. Mr. Byrne referred to caselaw contained in Exhibit E-9, placing particular emphasis on *Titus v. William F. Cooke Enterprises Inc.*, 2007 ONCA 573.

Mr. Coady, on behalf of the Respondent, submitted that the rental agreement was a standard form rental agreement that, after the first year expired, reverted to a month-to-month agreement. The Appellant is not forced to do anything. In a month-to-month rental agreement, the Appellant is free to provide lawful notice to terminate the rental agreement and move. He has chosen not to do so. There is no authority in the **Act** to consider an analysis of comparative rent.

Mr. Coady also submitted that the Commission, as an administrative tribunal, could not rely on the common law except to the extent that the **Act** grants such authority. In particular, the Commission, unlike the Court, has no equitable jurisdiction and no inherent authority. Rather, the Commission's authority is completely based on statute, in particular the **Act** and the **Island Regulatory and Appeals Commission Act**.

Mr. Coady submitted that there is no breach of the **Act** and no violation of the rental agreement.

## DECISION

The appeal is denied and the Director's Order LD15-205 is upheld in its entirety for the reasons that follow.

The Appellant has expressed concerns about the Canadian Justice System and accordingly, the Commission is of the view that a brief explanation is helpful.

The Office of the Director of Residential Rental Property and the Prince Edward Island Regulatory and Appeals Commission are both statutory tribunals whose authority stems entirely from legislation enacted by the Legislative Assembly of Prince Edward Island. These tribunals, like other Canadian administrative tribunals, have no inherent jurisdiction. The concept of inherent jurisdiction is explained in the next paragraph.

By contrast, the Supreme Court of Prince Edward Island and the Prince Edward Island Court of Appeal are Superior Courts under the **Constitution Act, 1867**. These Superior Courts have inherent jurisdiction, which means they do not derive their existence from any statute but rather from the Canadian Constitution and the English system of common law and equity.

The Legislative Assembly of Prince Edward Island has not granted either the Director or the Commission with equitable jurisdiction and there is nothing unusual in this fact.

The **Act** does not provide the Director or the Commission with any authority to reduce monthly rent based on a comparison between rental units. Accordingly, this appeal is dismissed and Director's Order LD15-205 is upheld.

During the course of the hearing, the Commission requested a redacted previous tenants' ledger for the Appellant's particular unit. In providing this document, the Respondent discovered that the Appellant had been overcharged, immediately advised the Commission of this fact and the Respondent in good faith undertook to refund the overpaid rent to the Appellant. The Commission notes that the funds were paid in Trust to the Director and these funds have been disbursed to the Appellant prior to the issuance of this Order. Accordingly, the Commission finds that this auxiliary matter is now settled.

**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. Director's Order LD15-205 is upheld.

**DATED** at Charlottetown, Prince Edward Island, this **18th** day of **August**, 2015.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. Ferne MacPhail)

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Ferne MacPhail, Commissioner

(sgd. Peter McCloskey)

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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)