



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15030
Order LR15-27**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Mazen and Narma Mayaleh
against Order LD15-308 issued by the
Director of Residential Rental Property on
August 20, 2015.

BEFORE THE COMMISSION

on Monday, the 14th day of September, 2015.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Ferne MacPhail, 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, by Mazen and Narma Mayaleh against Order LD15-308 issued by the Director of Residential Rental Property on August 20, 2015.

Order

BACKGROUND

On September 3, 2015 the Commission received a Notice of Appeal from Michel Al-Mayaleh (“Mr. Al-Mayaleh”) the representative of two lessors, Mazen and Narma Mayaleh (the “Appellants”) requesting an appeal of Order LD15-308 dated August 20, 2015 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 3, 2015 a lessee, Donovan Fitzpatrick (the “Respondent”) filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination together with a copy of the Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 1, 2015.

The matter was heard by the Director on August 12, 2015 and in Order LD15-308, the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination (Form 6) is valid.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated August 1, 2015 to be effective September 1, 2015 is not valid.*
- 3. The rental agreement between the lessee and the lessors for the residential premises in question shall remain in effect.”*

The matter was heard by the Commission on September 11, 2015. The Appellants were represented by Mr. Al-Mayaleh. Adam Cudmore and Alan Jenkins testified for the Appellants. The Respondent represented himself. Robert Retieff testified for the Respondent.

EVIDENCE

Mr. Al-Mayaleh told the Commission that the problems began about five or six months ago and involves issues that include noise and a lack of respect for other tenants in the building.

Mr. Cudmore became a tenant in the same building on September 1, 2015 and he testified as to his concerns and observations.

Mr. Jenkins has been a tenant in the same building for approximately one and one half years. Mr. Jenkins testified as to his concerns and observations.

The Respondent testified that the Appellants would never fix things at the residential premises. The problems began after the Respondent had raised concerns about the premises with the Director and the Director did an inspection. It is the Respondent's position that since that time Mr. Al-Mayaleh wants him out of the premises.

Mr. Retieff lives in a unit in the same building. He is the Respondent's brother. He made a noise complaint months ago but later withdrew his complaint. Mr. Retieff stated that there have been no noise problems since the August 12, 2015 hearing held before the Director.

DECISION

The Commission allows the appeal for the reasons that follow.

The Commission has had the benefit of evidence that was not before the Director, specifically the testimony of Mr. Cudmore and Mr. Jenkins. Based on this evidence, weighed on the civil standard of a balance of probabilities, the Commission finds that the Respondent has breached the provisions of Section 14.(1)(a) (Statutory Condition 3.), that is to say the Respondent [lessee] or persons admitted to the premises by the Respondent [lessee] have conducted himself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees.

Accordingly, the Commission allows the appeal and based on new evidence not before the Director, reverses Director's Order LD15-308.

The Commission hereby orders that the rental agreement between the parties be terminated as of 12:00 noon on Thursday, September 17, 2015. The Respondent [lessee] shall vacate the residential premises on or before 12:00 noon on Thursday, September 17, 2015.

If the Respondent [lessee] does not vacate the premises by 12 noon on Thursday, September 17, 2015, the Appellants [lessors] **shall be at liberty to apply to the Director, without further notice to the Respondent [lessee], for an Order directing the Sheriff to put the lessor in possession of the rental premises.**

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. As a result of new evidence heard by the Commission, the Commission reverses Director's Order LD15-308.
3. The rental agreement between the parties is hereby terminated effective 12:00 noon on Thursday, September 17, 2015.

4. **The Respondent [lessee] shall vacate the residential premises located at 159 Water Street, Apartment #1, Charlottetown, PE on or before 12:00 noon on Thursday, September 17, 2015.**
5. **If the Respondent [lessee] does not vacate the residential premises by 12:00 noon on Thursday, September 17, 2015, the Appellants [lessors] shall be at liberty to apply to the Director, without further notice to the lessee, for an Order directing the Sheriff to put the lessor in possession of the rental premises.**

DATED at Charlottetown, Prince Edward Island, this **14th** day of **September, 2015.**

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)