



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15033
Order LR15-31**

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, filed by Wayne Richards (represented by Randy Pitre) against Order LD15-336 issued by the Director of Residential Rental Property and dated September 16, 2015.

BEFORE THE COMMISSION

on Tuesday, the 13th day of October, 2015.

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 Wayne Richards (represented by Randy Pitre) against Order LD15-336 issued by the Director of Residential Rental Property and dated September 16, 2015.

Order

BACKGROUND

On September 28, 2015, the Commission received a Notice of Appeal from Randy Pitre (“Mr. Pitre”) on behalf of a lessor, Wayne Richards (the “Appellant”), requesting an appeal of Order LD15-336 dated September 16, 2015 issued by the Office of the Director of Residential Rental Property (the “Director”).

By way of background, on August 18, 2015 a lessee, Christopher James Gallant (the “Respondent”) filed with the Director a Form 6 – Notice by Lessee to Set Aside Notice of Termination to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 9, 2015.

The matter was heard by the Director on September 2, 2015 and in Order LD15-336 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 9, 2015 and extended to be effective September 9, 2015 is not valid.*
- 3. The rental agreement between the lessee and the lessor for the residential premises in question shall remain in effect.”*

The Commission heard the appeal on October 9, 2015. Mr. Pitre represented the Appellant. The Appellant was also present. The Respondent represented himself. Kristen Larter testified for the Respondent.

EVIDENCE

Mr. Pitre referred to the Appellant’s Notice of Appeal (Exhibit E-7) and specifically the grounds for appeal. He expressed concern with respect to various findings contained in Order LD15-336, as well as a failure by the Respondent to serve the Form 6.

Mr. Pitre filed a CD-R (Exhibit E-9) containing edited video footage from a concealed camera that he alleged established that the Respondent and Ms. Larter stole food items from a refrigerator shared by several tenants. He also filed a log sheet for the video (Exhibit E-9A). He also filed a photograph of an August 8, 2015 text message sent to him from one of the other tenants whereby that tenant expressed his opinion that the Respondent had stolen a popsicle earlier that morning.

Mr. Pitre expressed concern about the Respondent performing automobile repair work in the parking lot of the residential premises at night and during early morning hours.

Mr. Pitre also expressed concern about the Respondent repeatedly opening and closing doors at night, noting that in the early hours of the morning on August 6, 2015 the Respondent had opened and closed his door some 57 times. Mr. Pitre submitted that such behavior violated the quiet enjoyment of other tenants.

The Respondent addressed the submissions and testimony of Mr. Pitre. The Respondent testified that he had served Mr. Pitre with the Form 6 while Mr. Pitre was in his car.

The Respondent acknowledged that he did eat the popsicles but stated that the box of popsicles was on his side of the freezer and he believed, at the time, that Ms. Larter had purchased them for him. He noted that Ms. Larter, who is his girlfriend, buys most of his food for him. When he found out that the popsicles belonged to someone else, he bought replacement popsicles and offered his apologies.

The Respondent testified that he had no interest in eating the fish fillets and buffalo meat which was alleged to have been stolen. He noted that he eats "microwave food".

The Respondent told the Commission that he is a diabetic and he gets restless at night. He submitted that he is careful not to slam doors at night when he opens and closes them. He admitted that on the night of August 6, 2015 he opened and shut his door many times as it was a very hot and humid night.

The Respondent acknowledged that he did work on his car at night and described in some detail the kind of work he performed. He stated that he only used a light under the car and did not do work that caused noise. He also noted he did not do any bodywork on the car.

DECISION

The Commission denies the appeal and upholds Director's Order LD15-336 as the Commission agrees with the reasoning and findings contained in said Director's Order.

The Appellant has raised concerns about the matter of service of the Form 6, and the Commission is of the view that it is important to address these concerns.

Section 16 of the *Rental of Residential Property Act* sets out the process for a lessee to set aside a Notice of Termination:

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.

In Commission Order LA99-06, the Commission considered the effect of a failure to serve a Notice of Appeal within the context of a **Planning Act** appeal. In Order LA99-06, it was noted that the **Planning Act** requires an appellant to serve his Notice of Appeal on the Minister and in that particular appeal the appellant had failed to do so. Commission Chair Wayne D. Cheverie, Q.C., (as he then was) addressed the issue:

Service of Notice upon the Minister

In Exhibit D3, the Developer raises an argument that the Appellant has failed to comply with the provisions of subsection 28(6) of the Act, in that the Appellant failed to serve the Minister with a copy of the Notice of Appeal. There is no doubt that subsection 28(6) of the Act requires a copy of the Notice of Appeal to be served upon the Respondent within seven days of filing an appeal with the Commission. However, the statute does not go on to provide that failure to do so brings an end to the appeal.

Section 9 of the **Interpretation Act**, R.S.P.E.I. 1988, Cap. I-8 states:

Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

What is the purpose of subsection 28(6)? Surely, it is there to make sure that the Minister, in this case, is notified in a timely fashion that the Appellant has launched an appeal with the Commission. The facts of the present case disclose that the Respondent has not been prejudiced in any way as a result of apparent non-compliance with subsection 28(6). In fact, it is the Developer who has raised this objection, and taken the lead, not the Respondent.

Regardless of whether the letter to the Minister dated June 2, 1999 (Exhibit A3) satisfies the provisions of subsection 28(6) of the Act, it would appear to the Commission that the Minister had knowledge of the Notice of Appeal and in fact it appears obvious that he had received a copy of the Notice of Appeal which was filed with the Commission as he was able to submit a letter to the Commission raising a number of issues with respect to the Appellant's grounds for appeal on August 24, 1999 (Exhibit R17). Furthermore, the Appellant in his submission of October 15, 1999, states that a copy of the Notice of Appeal was served on the Minister.

*After full consideration of all the submissions of the parties; and after reviewing the facts of this case in light of Section 28 in its entirety against the backdrop of Section 9 of the **Interpretation Act**, supra; it is the Commission's considered opinion that there has been no prejudice or compromise of the Respondent's position. Therefore, this argument fails and the appeal will proceed.*

In the present case, there is some doubt as to whether the Respondent served Mr. Pitre with the Respondent's Form 6 APPLICATION BY LESSEE TO SET ASIDE NOTICE OF TERMINATION. Mr. Pitre told the Commission he was not served by the Respondent while the Respondent stated that he did in fact serve Mr. Pitre.

However, Mr. Pitre did acknowledge that the Director had provided him with various papers, including a copy of the Form 6, prior to hearing the matter.

As the purpose of the Form 6 is to provide a lessor with timely notice that a lessee is challenging the lessor's Form 4 and Mr. Pitre had received a copy of the Form 6 prior to the hearing of the matter by the Director, the Commission finds that there has been no prejudice or compromise of the Appellant's position.

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 Director's Order LD15-336 is hereby upheld.**

DATED at Charlottetown, Prince Edward Island, this **13th** day of **October**, **2015**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

(sgd. Peter MacCloskey)

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.