



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18009
Order LR18-09**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by James and Nicole
Rayner against Order LD18-102 dated March
26, 2018 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Friday, the 4th day of May, 2018.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan 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 James and Nicole Rayner against Order LD18-102 dated March 26, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On April 7, 2018 the Commission received a Notice of Appeal from a lessee, James Rayner (“Mr. Rayner”) on behalf of himself, Nicole Rayner and all occupants (collectively the “Appellants”), requesting an appeal of Order LD18-102 dated March 26, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on February 8, 2018 the lessor, ATO Properties Ltd.(the “Respondent”) filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking an order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession. Attached to the Form 2 was a Form 4 - Notice of Termination by Lessor of Rental Agreement dated November 24, 2017.

The matter was heard by the Director on March 21, 2018 and in Order LD18-102 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon on Friday, April 6, 2018.”*

The Commission heard the appeal on May 3, 2018. The Appellants were represented by Mr. Rayner. The Respondent was represented by Dan Murray (“Mr. Murray”).

EVIDENCE

Mr. Rayner testified that previous occupants had partitioned some areas in the basement. Current occupants were using these areas as a music room and a makeup room. Mr. Rayner acknowledged that there was a cot in each of these two spaces. He testified that each occupant had a bed in the finished level of the residential premises. He testified that Service Canada had inspected the premises and had no concerns.

Mr. Murray testified that upon inspection in autumn of 2017 the Respondent became aware that there were beds located in the basement. The Respondent then advised Mr. Rayner by letter to remove the partitions. However, a follow up inspection in early 2018 revealed that the partitions were still in place. The Respondent then initiated the process to terminate the rental agreement with Mr. Rayner.

Mr. Murray testified that there were no egress windows or doors in the basement and thus it would be a violation of the fire code to permit anyone to sleep in the basement.

Mr. Murray told the Commission that, upon the Respondent gaining possession of the residential premises, the occupants of the residential premises would be permitted to stay in the residential premises provided that the basement was not used for sleeping and that the terms of the rental agreement were followed by the occupants.

DECISION

The Commission denies the appeal for the reasons that follow.

The Respondent identified a serious concern following an inspection of the residential premises in the autumn of 2017. The Respondent advised the Appellant by letter to remove the partitions and then followed up with an inspection in early 2018, at which time the partitions were found to be still in place.

While the presence of partitions in the basement is not, by itself, necessarily a violation of fire code requirements; it appears that the presence of partitions have, in this situation, encouraged occupants to have placed beds or cots in the basement. This strongly suggests that some people are sleeping in a basement that does not meet fire code egress requirements. This is a violation of the fire code and places these people at risk. Given the potential for tragic consequences, the Respondent was justified in terminating the rental agreement when the Appellant failed to promptly act to remove the partitions.

Accordingly, the Commission denies the appeal and upholds Director's Order LD18-102.

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 LD18-102 is upheld in its entirety.**

DATED at Charlottetown, Prince Edward Island, this **4th** day of **May, 2018**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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)