



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR18020  
Order LR18-18**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Brent McQuaid against Order LD18-180 dated June 6, 2018 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 20th day of June, 2018.

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

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

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# Order

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## BACKGROUND

On June 12, 2018 the Commission received a Notice of Appeal from a lessor, Brent McQuaid (the “Appellant”), requesting an appeal of Order LD18-180 dated June 6, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 18, 2018, a lessee, Kelley McQuaid (the “Respondent”) filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination. Attached to the Form 6 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 14, 2018 signed by the Appellant.

The matter was heard by the Director on June 5, 2018 and in Order LD18-180 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

1. *The lessee’s application to set aside the Notice of Termination by Lessor of Rental Agreement (Form 6) dated May 14, 2018 for effect June 14, 2018 is allowed and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on June 18, 2018. The Appellant was not present at the hearing but was represented by his legal counsel Maria Sanderson (“Appellant’s Counsel”). Andrew Chisholm (“Mr. Chisholm”), Luke Crighton (“Mr. Crighton”) and Debbie O’Brien (“Ms. O’Brien”) tested on behalf of the Appellant. The Respondent was present at the hearing and testified on her own behalf.

Appellant’s Counsel presented five new exhibits, Exhibits E-9 through E-13.

## EVIDENCE

Mr. Crighton testified on behalf of the Appellant. Mr. Crighton is a tenant at 25 Glen Stewart Drive. Mr. Crighton reviewed his chronology contained in Exhibit E-5 and his recent letter attached to Exhibit E-13. Mr. Crighton’s primary complaint is the sound of loud adult arguing from the Respondent’s apartment.

Mr. Chisholm is the Appellant's handyman. Mr. Chisholm prepared an estimate for replacement of the fence and disposal of the old fence (Exhibit E-13). Mr. Chisholm testified that the fence was broken in October 2017 and was "stood up" after that but "not fixed right".

Ms. O'Brien is both a tenant and the superintendent at 25 Glen Stewart Drive. In her testimony, she read from her statement (Exhibit E-4) and from her updated June 16, 2018 statement (E-10). Ms. O'Brien stated that she had seen the fence broken by the Respondent's son in April 2018. Ms. O'Brien stated that she was intimidated by the presence of one of the Respondent's brothers in the hallway on the third floor when he had no reason to be on that floor. She also expressed concern that people were parking in a no parking zone. She also testified to other details which form part of the Commission's audio record.

Appellant's Counsel submitted that, based on the balance of probabilities, there was sufficient evidence to support the termination of the rental agreement, and that the Director's Order should be set aside with a termination dates either as set out in the Notice of Termination by Lessor of Rental Agreement (Form 4) dated May 14, 2018 or at a date of the Commission's discretion.

The Respondent testified that she lives in her apartment at 25 Glen Stewart Drive along with her two young children. She testified that she knows many of the other tenants in the apartment building but only Ms. O'Brien and Mr. Crighton have complained. She testified that she occasionally parks in the lane when she is bringing groceries into her unit. She testified that other people park there as well and noted that the car pictured in Exhibit E-11 is not hers. She testified that in the autumn of 2017 she and the Appellant had agreed that she could stay until the end of the school year provided there were no further complaints.

The Respondent submitted that she needs additional time to find another apartment.

## DECISION

The appeal is allowed and Director's Order LD18-180 is reversed for the reasons that follow.

The Commission heard the appeal as a *hearing de novo* and had the benefit of the testimony of two tenants of 25 Glen Stewart Drive as well as Exhibits E-9 through E-13. The Director did not have the benefit of this additional testimony and these additional exhibits.

With regard for the Appellant's concerns pursuant to section 14(1)(b) [damage beyond reasonable wear and tear] of the ***Rental of Residential Property Act*** (**"the Act"**), the Commission finds that the evidence does not support a termination of the residential rental agreement for this reason alone. Given the evidence before the Commission, it would appear most unlikely that a fence in sound condition could be toppled by one young child and it was more probable than not that the fence was in an advanced state of decay. Such a conclusion is further bolstered by the presence of Exhibit E-12, which provides a quote for a complete replacement of the fence and the removal of the old fence, neither of which would be necessary if the fence were in sound condition.

However, the Appellant also requested the termination of the rental agreement pursuant to section 14(1)(a) of the **Act**. In this regard, the Commission finds that the evidence supports a finding that the Respondent or her adult guests did interfere with the quiet enjoyment of other lessees during the spring of 2018.

Accordingly, the Commission, hearing the matter *de novo*, allows the appeal and reverses the Director's Order.

The rental agreement between the parties is hereby terminated as of 11:59 p.m. on Tuesday, July 31, 2018 and the Respondent and all occupants of the premises shall vacate the premises on or before that date and time. If the Respondent fails to vacate the premises by this date and time, then the Appellant shall be entitled to apply to the Director without further notice to the Respondent for an order directing the Sheriff to put the Appellant in possession of the 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 and Director's Order LD18-180 is hereby overturned.
2. The rental agreement between the parties is hereby terminated effective 11:59 p.m. on Tuesday, July 31, 2018.
3. The Respondent [lessee] and all occupants of her apartment shall vacate the premises and put the Appellant [lessor] in full possession of the premises on or before 11:59 p.m. on Tuesday, July 31, 2018.
4. If the Respondent [lessee] fails to vacate the premises in accordance with paragraph 3 of this Order, then the Appellant [lessor] shall be entitled to apply without further notice to the Respondent [lessee] for an order directing the Sheriff to put the Appellant [lessor] in possession of the premises.

**DATED** at Charlottetown, Prince Edward Island, this **20th** day of **June**, 2018.

**BY THE COMMISSION:**

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(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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(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)