

**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

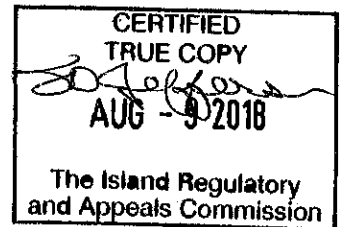
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

Docket LR18027  
Order LR18-23

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Alan Gauthier against Order  
LD18-222 dated July 16, 2018 issued by the  
Office of the Director of Residential Rental  
Property.

**BEFORE THE COMMISSION**  
on Thursday, the 9th day of August, 2018.

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



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# Order

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**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Alan Gauthier against Order LD18-222 dated July 16, 2018 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On July 18, 2018 the Commission received a Notice of Appeal from a lessee, Alan Gauthier (the "Appellant"), requesting an appeal of Order LD18-222 dated July 16, 2018 issued by the Director of Residential Rental Property (the "Director").

By way of background, on July 5, 2018, the Appellant 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 July 4, 2018 to be effective August 4, 2018 signed by two lessors, Wade and Trudy Peardon (the "Respondents").

The matter was heard by the Director on July 10, 2018 and in Order LD18-222 the Director ordered:

***"IT IS THEREFORE ORDERED THAT***

- 1. The lessee, Alan Gauthier's, application to set aside the Notice of Termination (Form 6) is dismissed.*
- 2. The rental agreement between the lessors and lessee, Alan Gauthier, for the residential premises is terminated as of 12:00 midnight on August 4, 2018.*
- 3. The lessee, Alan Gauthier, shall vacate the premises on or before 12:00 midnight on August 4, 2018."*

The Commission heard the appeal on August 8, 2018. The Appellant was present at the hearing. The Respondents were also present.

## EVIDENCE

The Appellant testified that he never smoked in his rental unit and no longer smokes on the premises. He has sought permission from an adjacent landowner and smokes outside on the adjacent landowner's lawn. He testified that the Respondents agreed to rent him the unit knowing he was a smoker and signed the rental agreement on this basis, with an oral side agreement that he would smoke outside. He abided by this oral agreement. When the Respondents requested that he move farther away from the outside of the Respondent's four-unit building the Appellant agreed to do this.

The Appellant reviewed his calculations of the distances between where he smokes and each of the four units in the Respondent's building (Exhibit E-7).

The Respondents testified that their building is a modern, recently constructed four unit row-house and each unit has its own independent air exchange system. They testified that they visited the Appellant's unit on one occasion and, although they themselves are non-smokers, they could not smell any signs of cigarette smoke in the unit. The Respondents note that other tenants have smelled cigarette smoke in their units and attribute that smell to the Appellant's smoking.

## DECISION

The appeal is allowed and the Director's Order LD18-222 is set aside for the reasons below.

The Appellant maintains that he has never smoked in the unit and the Respondent's testimony corroborates his evidence on that point. There are no indoor common areas in this four-unit row house. Both parties agree that the Appellant was not permitted to smoke in the unit but that he was permitted to smoke outside the unit. In the spring of 2018 the Respondents further requested that the Appellant smoke farther away from the building and he complied with this request. Indeed, the Appellant obtained permission from an adjacent landowner in order to further increase the distance between where he smoked and the closest portion of the row house building.

The Commission finds that the Appellant is not in breach of the written rental agreement or any oral side agreements concerning the location of his smoking. The distances between the units and where the Appellant smokes are sufficiently large (Exhibit E-7) that the impact of his off premises smoking on the other tenants would logically be of a *de minimus* nature and therefore the factual evidence does not meet a reasonable threshold to trigger either clause 14(1)(a) or 14(1)(e) of the *Rental of Residential Property Act*.

Accordingly, the Commission allows the appeal and sets aside Director's Order LD18-222.

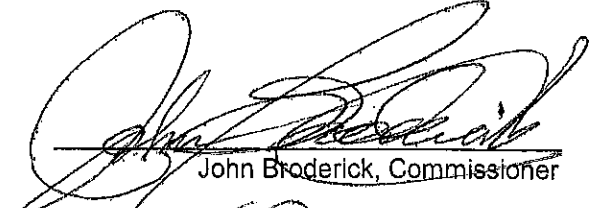
**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

## IT IS ORDERED THAT


1. The appeal is allowed.
2. Director's Order LD18-222 is hereby set aside.

**DATED** at Charlottetown, Prince Edward Island, this **9th** day of **August**,  
2018.

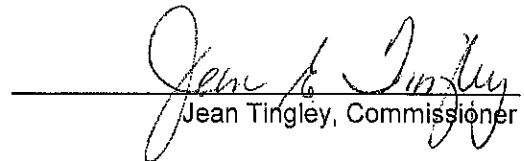
**BY THE COMMISSION:**



John Broderick, Commissioner



M. Douglas Clow, Vice-Chair



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)