



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18035
Order LR18-33**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Rita Zhao against Order
LD18-286 dated September 10, 2018 issued by
the Office of the Director of Residential Rental
Property.

BEFORE THE COMMISSION

on Thursday, the 11th day of October, 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 filed under Section 25 of the Rental of Residential Property Act by Rita Zhao against Order LD18-286 dated September 10, 2018 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On September 10, 2018 the Commission received a Notice of Appeal from a lessor, Rita Zhao (the “Appellant”), requesting an appeal of Order LD18-286 dated September 10, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 21, 2018, a lessee, Catherine Milligan (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 August 20, 2018 to be effective September 20, 2018 signed by the Appellant.

The matter was heard by the Director on September 4, 2018 and in Order LD18-286 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) is allowed and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on October 3, 2018. The Appellant was present at the hearing along with her legal counsel Barry Burley (“Mr. Burley”). The Respondent was also present.

EVIDENCE

The Appellant was adamant that she did not sign the cleaning agreement. She stated that she and the Respondent had an oral cleaning agreement for \$100.00 to clean apartment #6. Mr. Burley filed Exhibit E-16 which contains text messages from another tenant to the Appellant expressing concern that someone was leaving the door open in winter, the furnace running non-stop as a result and expressing concern the furnace might catch on fire. Mr. Burley raised safety concerns and financial concerns, given increased consumption of furnace oil. Mr. Burley submitted that the inspection letter of September 4, 2018 (Exhibit E-14) demonstrates a deteriorating landlord tenant relationship.

The Respondent stated that she did not leave the back door open. She stated that a former tenant couple had a dog and left the back door open in the process of letting their dog in and out. The Respondent stated that she and those former neighbours did not get along ultimately culminating in the filing of a Recognizance under section 810 requiring the male member of the neighbour couple to refrain from any contact with the Respondent (Exhibit E-13).

DECISION

The Commission denies the appeal and upholds the decision of the Director for the reasons that follow.

The Appellant seeks to terminate the rental agreement with the Respondent according to subsection 14(1)(e) of the **Rental of Residential Property Act**:

14. (1) The lessor may also serve a notice of termination upon the lessee where

...

(e) the safety or other lawful right or interest of the lessor or other lessee in the residential property has been seriously impaired by an act or omission of the lessee or a person permitted in or on the residential property or residential premises by him;

Mr. Burley referred several times to Exhibit E-16, and thus a careful examination of that document is in order. The following are some excerpts from these text messages from a third party tenant living in the same apartment building as the Respondent:

Hi. I wanted to tell you that someone in the building is leaving open the back door to get the furnace to run nonstop for more heat. I closed it 3 three different times. It is dangerous because the furnace can overheat and catch fire when the thermostat doesn't shut it down because of the cold outside in the hall. Please tell number 5 [apparently referring to the Respondent] not to allow this again. The building could burn down plus it is hard on the oil bill. Thanks.

...

*Hi. It is [name redacted for privacy]
Someone is putting dirt in my apartment under the door. It has happened three times.*

At the time, the Respondent was also serving as apartment building manager. While E-16 indicates that “someone” is leaving the door open and “someone” is putting dirt under the text author’s apartment door, the sole allegation against the Respondent is that she, apparently as building manager, was not monitoring the status of the door or keeping tabs on the activities of mischievous tenants. There is no allegation that the Respondent was the cause of the door left open or the dirt being placed under the door.

The onus lies on a lessor where the lessor seeks to terminate a rental agreement. Neither party filed compelling evidence to support their position, but the onus is on the Appellant to persuade the Commission that the findings and decision of the Director should be overturned and the rental agreement terminated on the basis of a serious impairment of the safety or other lawful right of the lessor or another lessee by an act or omission by the Respondent. The evidence offered by the Appellant simply did not meet that standard.

Accordingly, the Commission agrees with the findings and the decision of the Director in Order LD18-286.

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 LD18-286 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **11th** day of **October**, **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)