



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR18042  
Order LR18-39**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Canada Prajna Wisdom Co.  
against Order LD18-309 dated September 28,  
2018 issued by the Office of the Director of  
Residential Rental Property.

**BEFORE THE COMMISSION**

on Friday, the 26th day of October, 2018.

John Broderick, Commissioner  
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

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Canada Prajna Wisdom Co. against Order LD18-309 dated September 28, 2018 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On October 5, 2018 the Commission received a Notice of Appeal from a lessor, Canada Prajna Wisdom Co. (the “Appellant”), requesting an appeal of Order LD18-309 dated September 28, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on September 18, 2018, a lessee, Alfred Barriault (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 October 17, 2018 to be effective October 18, 2018 signed by the Appellant. At the hearing before the Director, both parties agreed that the Form 4 was dated incorrectly, and that it should have been dated September 17, 2018 for effect October 18, 2018.

The matter was heard by the Director on September 26, 2018 and in Order LD18-309 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 24, 2018. The Appellant was represented by Corey MacDonald (“Mr. MacDonald”). Don MacFadyen, Clifford Fitzpatrick, Robert Faithful, Leonard Toole, Charlene Conway and Gordon Faithful testified on behalf of the Appellant. The Respondent was also present and testified.

## EVIDENCE

Mr. MacDonald called six witnesses, five of which are current tenants living at 307 University Avenue. The remaining witness lives in an apartment building across the street which is not owned by the Appellant. These witnesses testified to their interactions with the Respondent and also testified as to behaviour that they attribute to the Respondent.

Mr. MacDonald submitted that the actions of the Respondent interfere with the quiet enjoyment of other tenants and that the rental agreement between the Respondent and the Appellant should be terminated.

The Respondent testified, denying some of the allegations and explaining that other interactions were misstated. As an example of the latter, he testified that he did not accuse a fellow tenant of putting paint on his car; rather he asked that tenant if he had seen someone put paint on his car.

## **DECISION**

The Commission denies the appeal and upholds Director's Order LD18-309.

Much of the testimony offered by the Appellant's witnesses concerned events that occurred some time ago, such as two years ago. Some evidence involved some conjecture, as the witness felt the Respondent did something but did not actually see him do it.

The burden of proof rests with a lessor seeking to terminate a rental agreement on the basis of interference by one lessee with the quiet enjoyment of other lessees. The evidence before the Commission included some relatively recent events but also other events that occurred approximately two years ago.

While the evidence comes close to being sufficient to terminate the rental agreement, it is not quite sufficient to satisfy the burden of proof, which is based on the civil standard of the balance of probabilities.

In the event the Respondent persists with this pattern of behaviour, the Appellant is certainly free to file a fresh application with the Director, supported by more recent and less speculative evidence. If the Respondent is found to have persisted in his behaviour, it is quite possible that either the Director, or the Commission on appeal, will find that the evidence has been sufficient to meet the burden of proof and thus warrant a termination of the rental agreement. Accordingly, the Respondent should consider himself cautioned.

**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 LD18-309 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **26th** day of **October**, **2018**.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Jean Tingley)

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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)