



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19005
Order LR19-02**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Xiong Liang Chen against Order LD19-009 dated January 11, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Thursday, the 7th day of February, 2019.

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 Xiong Liang Chen against Order LD19-009 dated January 11, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On January 22, 2019 the Commission received a Notice of Appeal from a lessor, Xiong Liang Chen (the “Appellant”), requesting an appeal of Order LD19-009 dated January 11, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on December 17, 2018 two lessees, Todd Paynter (“Mr. Paynter”) and Christine Paynter (“Ms. Paynter”) (together the “Respondents”) 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 December 17, 2018, to be effective January 17, 2019.

The matter was heard by the Director on January 9, 2019 and in Order 19-009 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The Application by Lessee to Set Aside the Notice of Termination by Lessor of Rental Agreement (Form 4) dated December 17, 2018 is allowed and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on February 5, 2019. The Appellant was present along with his interpreter. Peter Noakes (“Mr. Noakes”) testified on behalf of the Appellant. The Respondents were also present.

EVIDENCE

The Appellant testified that he had new evidence to provide. He stated that the pictures provided in Exhibit E-10 made it clear that the garbage bin in question was a green compost bin. He referred to Exhibit E-11, an email sent to all tenants advising that they could be asked to move out if they did not sort their garbage properly. He noted he has received complaints from other tenants and garbage has been rejected.

Mr. Noakes testified for the Appellant. Mr. Noakes testified that Mr. Paynter did occasionally play loud rock music during the daytime. Mr. Noakes testified that if he asked Mr. Paynter to turn the music down, Mr. Paynter was abusive. Mr. Noakes testified that on a few occasions Mr. Paynter's visitors knocked on his door instead of Mr. Paynter's door. Mr. Noakes stated that in the past Mr. Paynter has borrowed items but did not return them. Mr. Noakes also expressed concern about security cameras which Mr. Paynter had installed and the locking of the common porch area which has been inconvenient for Mr. Noakes' visitors and for parcel delivery couriers. Mr. Noakes testified that Mr. Paynter and his friends smoke in the porch and use language which Mr. Noakes' friends find intimidating.

Mr. Paynter testified that he plays guitar and plays country music during the daytime. He testified that Mr. Noakes has a key for the lock for the porch. Mr. Paynter explained that six years ago he installed surveillance cameras as security for his business and the cameras only record if the alarm system goes off. Mr. Paynter testified that he locks the porch at night for security reasons but does not lock it during the day. Mr. Paynter testified that there are many garbage bins for the various tenants, the bins are easily opened and every tenant could be evicted based on incorrect sorting of garbage. He acknowledged that the items seen in the pictures did belong to him. He stated that he put these items in blue bags but they may have fallen out. He has never received a written warning specific to him about garbage issues.

Mr. Noakes acknowledged that one or two of his friends have keys to the porch and he accepts the explanation of how the security system works.

DECISION

The Commission denies the appeal and confirms the decision of the Director in Order LD19-009 to allow the rental agreement to continue.

The Appellant has sought to terminate the rental agreement based on sections 14(1)(a) and 14(1)(e) of the **Rental of Residential Property Act** ("the **Act**").

Section 14(1)(a) reads:

14. Grounds for termination

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

(a) statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;

Statutory condition 3 reads:

3. Good Behaviour

The lessee and any person admitted to the premises by the lessee shall conduct themselves in such a manner as not to interfere with the possession, occupancy or quiet enjoyment of other lessees.

Section 14(1)(e) reads:

(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;

While the Appellant did send a general email to all tenants cautioning them that failure to sort garbage properly could result in termination of their rental agreement, the Respondents have not received a specific written warning from the Appellant on this issue. While photographs show some non-compostable items in the green compost garbage bin, neither the Appellant nor his witness saw Mr. Paynter putting those items there. Mr. Paynter testified that he places such items in a blue bag and they may have fallen out.

While Mr. Paynter does appear to play music at a volume level not appreciated by Mr. Noakes, Mr. Noakes acknowledged this only happens occasionally during the daytime. There is no evidence that the Respondents have received a specific written warning from the Appellant for this behaviour.

The Commission finds that the Appellant has not provided sufficient evidence to support a breach of either Sections 14(1)(a) or 14(1)(e) of the **Act**.

Accordingly, the Commission confirms Director's Order LD19-009.

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 LD19-009 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **7th day of February, 2019.**

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)