



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19016
Order LR19-08**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by John Derek Gunn against
Order LD19-094 dated March 21, 2019 issued
by the Office of the Director of Residential
Rental Property.

BEFORE THE COMMISSION

on Monday, the 8th day of April, 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 John Derek Gunn against Order LD19-094 dated March 21, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On March 29, 2019 the Commission received a Notice of Appeal from a lessee, John Derek Gunn (the “Appellant”), requesting an appeal of Order LD19-094 dated March 21, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on March 8, 2019 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 March 6, 2019 signed by Reid Burke (“Mr. Burke”) on behalf of the lessor, Canadian Mental Health Association (the “Respondent”).

The matter was heard by the Director on March 21, 2019 and in Order 19-094 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination (Form 4) dated March 6, 2019 for effective April 6, 2019 is dismissed.*
- 2. The lessor’s Notice of Termination (Form 4) dated March 6, 2019 for effective April 6, 2019 is valid, and the rental agreement between the parties shall terminate on April 6, 2019 at 11:59 PM.*
- 3. The lessee shall vacate the residential premises on or before April 6, 2019 at 11:59 PM.*
- 4. If the lessee does not comply with paragraph 3 of this Order, possession of the residential premises shall be surrendered to the lessor, and the Sheriff is directed to put the lessor in possession of the residential premises on April 7, 2019 at 11:00 AM.”*

The Commission heard the appeal on April 4, 2019. The Appellant was present and was accompanied by Denise Walsh-Lyle of the Office of the Public Trustee, Public and Official Guardian of the Province. Rebecca Wilchynski (“Ms. Wilchynski”) testified on behalf of the Appellant. Mr. Burke testified on behalf of the Respondent.

EVIDENCE

The Appellant testified that while complaints have been raised, the complainants have not come forth to testify. He stated that he has helped his fellow tenants by running errands for them. He told the Commission he would like to stay.

Ms. Wilchynski testified that the Appellant is kind, thoughtful and helpful.

Mr. Burke reviewed the complaints referenced in the file record and submitted that they were serious.

DECISION

The appeal is denied and Director's Order LD19-094 is confirmed.

Subsection 26. (1) of the **Rental of Residential Property Act** ("the **Act**") sets out the nature and procedure of an appeal of a decision of the Director to the Commission:

26.(1) An appeal to the Commission shall be by way of a re-hearing, and the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit and make such decision or order as the Director is authorized to make under this Act.

Pursuant to clause 14.(1)(a) of the **Act**, a lessor may serve a notice of termination on a lessee where statutory condition 3 has been breached. Section 6 of the **Act** sets out the statutory conditions. 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.

The Commission has heard evidence from both parties and has reviewed the record before the Director. The Commission finds that the evidence supports a termination of the rental agreement based on a breach of statutory condition 3 as the conduct of the Appellant has interfered with the possession, occupancy and quiet enjoyment of the other tenants in the building.

Accordingly, Director's Order LD19-094 is confirmed.

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 LD19-094 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **8th day of April, 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)