



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19015
Order LR19-10**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act) by Michael Pirang against Orders LD19-087 and LD19-088 dated March 15, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Thursday, the 25th day of April, 2019.

John Broderick, Commissioner
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 (the "Act) by Michael Pirang against Orders LD19-087 and LD19-088 dated March 15, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On March 21, 2019 the Commission received a Notice of Appeal from a lessor, Michael Pirang (the "Appellant"), requesting an appeal of Orders LD19-087 and LD19-088 each dated March 15, 2019 issued by the Director of Residential Rental Property (the "Director").

Order LD19-087

By way of background, on January 25, 2019 a lessee, Avery Arsenault (the "Respondent") filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated January 23, 2019 seeking the following remedy by way of:

- an order to prohibit the discontinuance of the service in question;
- a finding that rent is owed;
- an order that an amount found to be owed be paid; and
- an order confirming that the lessee's rental agreement allows him to have a dog at the premises.

The matter was heard by the Director on March 12, 2019 and in Order LD19-087 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. *The lessee's claim for a return of rent is dismissed.*
2. *The lessee is entitled to parking at the property, but not a specific parking spot, pursuant to his rental agreement with the lessor.*
3. *The lessee is allowed to have one dog at the premises pursuant to his rental agreement with the lessor."*

Order LD19-088

By way of background, on February 5, 2019 the Respondent filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated January 31, 2019 signed by the Appellant citing the following reason:

You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees (s. 14(1)(a) of the Act).

The particulars of the termination stated:

“You have brought a dog into the building without obtaining permission from the owner. The dog has had complaints regarding barking and has been disturbing other tenants who have the right to a quiet and peaceful existence.”

The matter was heard by the Director on March 12, 2019 and in Order LD19-088 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination (Form 4) dated January 31, 2019 to be effective March 30, 2019 is allowed and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on April 18, 2019. The Appellant participated by way of telephone conference call. The Respondent was also present accompanied by William Arsenault.

EVIDENCE

The Appellant testified that pets are not permitted in the apartment building. The Appellant states that the Respondent was not given permission to have a dog in his apartment. The Appellant states that the Respondent has a dog in the apartment and there is no evidence before the Commission that the dog is a therapy dog. The Appellant stated on the record his objections to Exhibit E-21, a black and white photocopy of a photograph of a dog.

The Appellant stated that, with respect to the telephone complaint made by a tenant in the building, the fact that the dog was apparently on the street and not barking when the call was placed is not material as the tenant could have been registering a complaint about barking that occurred earlier that day.

The Respondent testified that Exhibit E-21 was presented just to indicate the size and type of dog. The Respondent testified that he purchased the dog in October 2018 after first obtaining the verbal permission of the Appellant’s property manager.

The Respondent stated that one tenant did complain about the dog barking and whining. The Respondent stated that the written complaint could be legitimate as the dog was very young at that time. With respect to the second complaint, the Respondent stated that the dog was outside when the telephone complaint was made. The Respondent stated that he was working from home the day of the telephone complaint and the dog was not barking.

The Respondent acknowledged that when he is away from the apartment he has the TV on as background “noise” for the dog. The Respondent acknowledged that he likes to play music louder than normal to relax.

DECISION

The appeal is denied and Director's Orders LD19-087 and LD19-088 are confirmed.

While the matter of parking was raised before the Director, only the matters relating to the presence of the dog were raised at the hearing before the Commission.

The rental agreement of December 1, 2018 (Exhibit E-6, pages 9-10 of the Commission's Exhibit List) neither permits nor prohibits pets. No schedule "D" setting out additional terms and conditions was provided to the Commission.

It is the position of the Appellant that dogs are not permitted in the building, that the Respondent was aware of this policy and that the Appellant's property manager told the Appellant that he did not give verbal permission to the Respondent allowing him to have a dog.

The Respondent testified that he had asked the Appellant's property manager for permission to have a dog and the Respondent stated that the property manager gave him verbal permission thus permitting him to have the dog in his apartment.

The Appellant's property manager did not testify before the Commission, nor did he file an affidavit or a signed letter in order to counter the Respondent's testimony.

With respect to the purported conversation between the Respondent and the Appellant's property manager concerning permission to have a dog in the apartment, the Appellant's testimony of what his property manager told him is hearsay evidence. The Commission must give more weight to the sworn testimony of the Respondent, who was a direct participant in the conversation, rather than the indirect hearsay evidence of the Appellant.

In the absence of direct evidence from the property manager, the Commission accepts the sworn direct evidence of the Respondent as he was the only participant of the conversation to testify. Accordingly, the Commission finds that the Respondent had received verbal permission from the property manager to have a dog in his apartment.

The Appellant submits that the quiet enjoyment of other tenants has been interfered with by the barking of the Respondent's dog. The Appellant references a handwritten letter, dated February 20, 2019, written by a tenant in the apartment building (Exhibit E-16, pages 28-29 of the Commission's Exhibit List).

The Respondent acknowledged that this written complaint could be legitimate as his dog was very young at the time. The Respondent also acknowledged that he leaves the TV on when he is out and will play music "louder than normal" to relax.

The Commission notes that Exhibit E-16 only refers to barking and "crying" from a dog. There is no mention of any complaint about TV sound or loud music.

Section 14.(1)(a) of the *Rental of Residential Property Act* (the “*Act*”) references statutory condition 3 which is contained in section 6 of the *Act* and reads:

6. 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 Respondent is responsible for ensuring that his dog does not interfere with the quiet enjoyment of other tenants.

Before the Commission is one letter of complaint from one tenant dated approximately two months prior to the hearing before the Commission. In addition, there is an indication that a telephone complaint was made; however neither party to that telephone call has testified before the Commission nor filed a written statement providing particulars of that telephone conversation.

The onus is on the Appellant to establish that the Respondent has breached a statutory condition.

While there is evidence that one tenant had been disturbed by the barking of the Respondent’s dog, and a later telephone complaint by the same tenant was placed, the Commission finds that this evidence, although of some significance, is not sufficient to meet the onus on the civil standard of the balance of probabilities.

Accordingly, the Commission finds that the Appellant has not sufficiently proved a breach of statutory condition 3.

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 Orders LD19-087 and LD19-088 are confirmed.

DATED at Charlottetown, Prince Edward Island, this **25th day of April, 2019**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(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)