



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19057
Order LR19-38**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Tamara MacDonald against Order LD19-427 dated September 18, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 30th day of October, 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 Tamara MacDonald against Order LD19-427 dated September 18, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On September 23, 2019 the Commission received a Notice of Appeal from a lessee, Tamara MacDonald (the "Appellant"), requesting an appeal of Order LD19-427 dated September 18, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on June 18, 2019 the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement believing that Statutory Condition 6.9 of the Act, relevant to quiet enjoyment, has been contravened and seeking a return of rent in the amount of \$5,000. The Appellant is seeking remedy by way of an Order that an amount found to be owed be paid.

The matter was heard by the Director on August 20, 2019 and in order LD19-427 the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessee's application for return of rent is dismissed."*

The Commission heard the appeal on October 22, 2019. The Appellant was present and was accompanied by Frank Morrison ("Mr. Morrison"). Pam Hill ("Ms. Hill") testified for the Appellant. The lessor, Charlottetown Area Housing Authority (the "Respondent") was represented by Doug Allen ("Mr. Allen") and Erin Donnelly ("Ms. Donnelly").

EVIDENCE

The Appellant testified that she is asking for a return of rent in the sum of \$5000.00 based on a loss of quiet enjoyment. She testified in detail concerning the impact that the smoking of other tenants and other tenant behaviour had on her. She stated that she endured these conditions for seven years and no human being should have to endure such conditions. She testified that she did not get a response to her emails to the Respondent.

The Appellant testified that, following the hearing before the Director, the Respondent moved her into a unit in a duplex. She testified that while she is happy to be living in her new unit she is concerned that some of the problems associated with other tenant behaviour followed her to her new unit.

Ms. Hill testified as a witness for the Appellant. Ms. Hill testified that she met the Appellant while doing advocacy work with the Appellant with respect to public smoking. Ms. Hill testified that there is no right to smoke in Canadian law. She submitted that non-smokers have a right to clean air and persons with environmental sensitivities and disabilities are to be accommodated. She referenced human rights and the United Nations in her remarks.

When questioned, Ms. Hill acknowledged that she had never visited the Appellant at her residential premises at 407 Queen Street. She stated that her reason for not visiting the residential premises was that it was “unsafe”.

Mr. Morrison testified with respect to smoke free advocacy, identifying the tobacco industry as the “enemy”, referencing the World Health Organization, and the need to protect citizens from harmful second hand smoke.

Mr. Morrison stated that an air exchanger would not be effective.

Mr. Morrison acknowledged that Prince Edward Island *Smoke Free Places Act* does not cover a private residence, including an apartment complex.

Mr. Allen testified that the Respondent is bound by existing lease agreements and thus the Respondent can only move over time to fully smoke free apartment buildings. He explained that when an apartment unit (where smoking occurred) is vacated that unit then becomes smoke free by way of the new rental agreement prohibiting smoking in the unit. He stated that all common areas are smoke free.

Mr. Allen stated that he was advised not to participate in an ongoing email exchange but the Respondent’s staff did respond to the complaints. He submitted that the Appellant was offered an air filtration system and an individual unit air exchanger but refused these measures. He testified that the Respondent was ultimately successful in finding a new residential unit for the Appellant.

DECISION

The Commission denies the appeal and confirms Director's Order LD19-427.

While the rental agreement between the parties is not contained in the evidence before the Commission, it appears that the Appellant lived for six years (per the Director’s Order) or seven years (per the Appellant’s testimony before the Commission) in 407 Queen Street which is an apartment complex operated by the Respondent.

It is the testimony of Mr. Allen that some of the units at 407 Queen Street were smoking units as permitted by the rental agreements for those particular units. He explained that as these units are vacated their status changes to non-smoking units with new rental agreements reflecting this new status. The apartment complex is thus transitioning to a non-smoking building and no smoking is permitted in common areas.

The record before the Commission includes Exhibit E-9 which contains some 72 emails from the Appellant raising concerns about her apartment. These emails began in March 2018 continuing for the final year and a half of the Appellant’s tenancy at 407 Queen Street. Thus, the evidence of the Appellant’s documented concerns began relatively recently.

Exhibit E-25 contains an email from Ryan Neale, Manager of Environmental Health with the Chief Public Health Office, Department of Health and Wellness. In Mr. Neale's email of July 18, 2019 he states:

During my conversation with Erin [Ms. Donnelly] on May 22, 2019, she advised that the following actions were taken in response to the concerns reported by Tamara MacDonald at 407 Queen Street:

- CAHA [the Respondent] hired a contractor to service the ventilation system;
- CAHA offered to provide an airpurifier for Tamara's unit;
- CAHA offered to install an independent venmar system in Tamara's unit.

In my opinion these were reasonable actions to take in an effort to alleviate the tenant's concerns regarding the smell of smoke in her unit.

It is the testimony of both parties that the Respondent has recently relocated the Appellant to a new unit in a duplex.

The Commission's jurisdiction in this appeal is restricted to the **Rental of Residential Property Act**.

The Commission finds that the Appellant claimed a loss of quiet enjoyment and the Respondent took action to service the ventilation system and offered to take action to improve the air quality in the Appellant's apartment. The Respondent then took the step of providing the Appellant with a non-smoking unit in a two-unit building. These actions were a reasonable response to the Appellant's concerns.

As the Appellant's concerns about quiet enjoyment were adequately addressed by the Respondent, the Commission denies the appeal and confirms Director's Order LD19-427 dismissing the application for a return of rent.

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 LD19-427 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **30th day of October, 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.