



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20015  
Order LR20-17**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act filed by Joel Spence against  
Order LD20-128 dated June 18, 2020 issued by  
the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 15th day of July, 2020.

Erin Mitchell, Commissioner  
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 under Section 25 of the Rental of Residential Property Act filed by Joel Spence against Order LD20-128 dated June 18, 2020 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On June 22, 2020 the Commission received a Notice of Appeal from a lessee, Joel Spence (the “Appellant”), requesting an appeal of Order LD20-128 dated June 18, 2020 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on June 8, 2020 two lessors, Deborah Ohlhausen (“Ms. Ohlhausen”) and Patrick Hemminger (“Mr. Hemminger”) (together the “Respondents”) filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking: an order to authorize the termination of the rental agreement; and an order that possession of the residential premises be surrendered to the lessor and directing the sheriff to put the lessor in possession. Attached to the aforementioned Form 2 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 5, 2020.

The matter was heard by the Director on June 17, 2020 and in Order LD20-218 dated June 18, 2020 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. Possession of the residential premises be surrendered to the lessors and the Sheriff is directed to put the lessors in possession of the residential premises on Tuesday, June 23, 2020 at 12:00 noon.”*

The Commission heard the appeal on July 15, 2020 by way of telephone conference in order to meet current social distancing requirements. The Appellant participated by telephone. The Respondents were represented by Ms. Ohlhausen and Mr. Hemminger who also participated by telephone.

## EVIDENCE

During the panel Chair’s opening remarks, the Appellant interrupted and gave a rapidly spoken submission, said goodbye and terminated the call. Because of his interruption and his subsequent unwillingness to follow the Chair’s direction, it was not possible to administer the affirmation to him prior to his oral submission.

Ms. Ohlhausen testified that she had given the Appellant numerous warnings prior to issuing the Form 4. She stated that the Appellant told her that “IRAC” (the Director) was closed. She testified that she urged the Appellant to telephone the Director. She testified that she believed he therefore knew that he was supposed to call the Director.

Ms. Ohlhausen provided further background on the Respondent’s side of the matter.

Mr. Hemminger testified that the Respondents had followed the rules and regulations of the Director and the Commission. He, too, noted that the Respondents had provided letters of warning, having given the Appellant “a break” in April 2020 due to the Covid-19 situation.

Mr. Hemminger provided further background on the Respondent’s side of the matter.

## **DECISION**

The appeal is denied and Director’s Order LD20-218 is confirmed.

The Appellant did not apply to set aside the Notice of Termination (Form 4) dated May 5, 2020. While the Director’s offices (and Commission’s offices as well) were, and still are, closed to the public due to the COVID-19 pandemic, both the Director and the Commission have been fully functioning and able to assist the public by telephone and email. The Commission’s website was clear in this regard.

The Commission notes the testimony of Ms. Ohlhausen that she had urged the Appellant to telephone the Director.

In addition, the Commission finds that a review of the documentary record, as well as a review of the audio recording of the hearing before the Commission, satisfies the Commission, on the civil standard of a balance of probabilities, that the actions of the Appellant interfered with the right to quiet enjoyment of other tenants to a sufficient extent as to warrant a termination of the rental agreement.

**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 LD20-218 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **15th** day of **July, 2020**.

**BY THE COMMISSION:**

(sgd. Erin Mitchell)

Erin Mitchell, 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.*

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