



**Docket: LR22066**

**Order: LR22-63**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by John Jarvis against Order LD22-365 issued by the Director of Residential Rental Property and dated October 21, 2022.

**BEFORE THE COMMISSION ON** Thursday,  
November 17, 2022

Panel Chair - Erin T. Mitchell, Commissioner  
M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, November 9, 2022

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# ORDER

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Philip J. Rafuse,  
Appeals Administrator  
Island Regulatory & Appeals Commission

This appeal asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that an eviction notice was valid.

## **BACKGROUND**

John Jarvis (“Mr. Jarvis”) entered into a written fixed term rental agreement for premises located at 39 Passmore Street, Apartment #2, Charlottetown, PE (the “Premises”) with Rev. Ed Keunecke (“Rev. Keunecke”). Rent for the Premises is \$1,200 per month with a security deposit paid for the same amount.

During the period July 28, 2022 and October 11, 2022, Mr. Jarvis filed numerous applications with the Director, namely:

- (a) Form 2 - return of rent application dated July 28, 2022;
- (b) Form 6 - set aside application dated August 15, 2022 disputing a Notice of Termination dated August 11, 2022 signed by Rev. Keunecke;
- (c) Form 2 - repair application dated August 22, 2022;
- (d) Form 6 - set aside application dated September 10, 2022 disputing a Notice of Termination dated September 6, 2022 signed by Rev. Keunecke;
- (e) Form 6 - set aside application dated October 11, 2022 disputing a Notice of Termination dated October 4, 2022 signed by Rev. Keunecke

A hearing before the Director was held on October 20, 2022 to hear all the applications.

In Order LD22-365 dated October 21, 2022, the Director concluded that the return of rent application be denied and the repair application be dismissed. The Director then ordered that the Notice of Termination dated August 11, 2022 was valid and ordered that the rental agreement between the parties be terminated and Mr. Jarvis must vacate the Premises by 11:59 p.m. on October 31, 2022.

Mr. Jarvis appealed the finding that the rental agreement was to be terminated. He did not appeal the balance of the findings in Order LD22-365.

The Commission heard the appeal by way of telephone conference call on November 9, 2022. Mr. Jarvis, Tracey Gilbert (“Ms. Gilbert”) and Aaron Gibson (“Mr. Gibson”) participated on behalf of Mr. Jarvis. Rev. Keunecke and Kennedy Hill (“Ms. Hill”) participated on behalf of Rev. Keunecke.

## **Disposition**

The appeal is allowed and Director’s Order LD22-365 is reversed with respect to the termination application. Director’s Order LD22-365 is confirmed with respect to the return of rent and repair applications.

## **The Issue**

Did the Director correctly determine that the Notice of Termination dated August 11, 2022 was valid?

## Analysis

The Notice of Appeal refers only to the decision to terminate the rental agreement and Mr. Jarvis acknowledged on the record that he was not disputing the ruling of the Director on the matter of the return of rent application and the repair application. Accordingly, the appeal hearing proceeded only on the matter of the termination of the rental agreement.

Mr. Jarvis disputes the Director's finding that he should be evicted. Mr. Jarvis stated that he believes he is a good tenant.

Mr. Jarvis called Ms. Gilbert as a witness, a tenant in another apartment in the same building. She testified that she has a good relationship with Mr. Jarvis. She did describe a specific incident which occurred between herself, her husband and Mr. Jarvis over the placement of garbage near Mr. Jarvis' mobility scooter. She described the incident as "an incident of words" and testified that this was swiftly resolved. She noted that she regularly visits Mr. Jarvis and is on good terms with him. She often re-boots his computer modem for him.

Ms. Gilbert testified that she was approached by Rev. Keunecke to write a letter to support Mr. Jarvis' eviction. She noted that she refused to do this.

The basis for Rev. Keunecke's application to terminate the rental agreement relates to concerns he has with Mr. Jarvis' behavior and its impact on others in the building.

Rev. Keunecke called one witness, Ms. Hill, who testified that she used to take rent from Mr. Jarvis. She stated that he had her phone number and started leaving her numerous harassing voicemail messages. Ms. Hill stated that she ultimately contacted the police. She testified that she lives in the building beside his and Mr. Jarvis yells at her through his window. Ms. Hill was unable to provide specific dates or further particulars of any of the alleged behaviours.

Rev. Keunecke also referred to a written unsworn statement from Gary Cheverie (Exhibit E-16) indicating that Mr. Cheverie refused to go to the building due to Mr. Jarvis' behavior.

Rev. Keunecke acknowledged that he did request a letter from Ms. Gilbert and her husband to support Mr. Jarvis' eviction.

The evidentiary onus rests on the landlord where an eviction of a tenant is sought for alleged behavioral issues.

The evidence of Ms. Gilbert supports Mr. Jarvis. The evidence of Ms. Hill supports Rev. Keunecke. Mr. Cheverie's note is signed and dated but is lacking in detail and unsworn. No police report was submitted in evidence. No audio recordings of the alleged voicemail messages were provided by Rev. Keunecke or his witness.

The Commission finds that Rev. Keunecke has not provided sufficient evidence to establish, on the civil standard of a balance of probabilities, that Mr. Jarvis interfered with the possession, occupancy or quiet enjoyment of other lessees or seriously impaired the safety or lawful right or interest of the lessor or other lessees.

Accordingly, Director's Order LD22-365 is reversed with respect to the matter of the termination of the rental agreement. Director's Order LD22-365 is confirmed with respect to the return of rent and repair applications.

**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 allowed in part.
2. Director's Order LD22-365 is reversed with respect to the matter of the termination of the rental agreement. The rental agreement continues to remain in effect.
3. Director's Order LD22-365 is confirmed with respect to the matters of the return of rent and repair applications.

**DATED** at Charlottetown, Prince Edward Island, Thursday, November 17, 2022.

**BY THE COMMISSION:**

(sgd. *Erin T. Mitchell*)

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Panel Chair - Erin T. Mitchell, Commissioner

(sgd. *M. Douglas Clow*)

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M. Douglas Clow, Vice-Chair

**NOTICE**

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides 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.