



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR05017
Order LR06-01**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Leslie and Julie Fall of Order No. LD05-321 of the Director of Residential Rental Property dated November 29, 2005.

BEFORE THE COMMISSION
on Friday, the 27th day of January, 2006.

Weston Rose, Commissioner
Norman Gallant, Commissioner
Kathy Kennedy, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Leslie and Julie Fall of Order No. LD05-321 of the Director of Residential Rental Property dated November 29, 2005.

Participants

1. **Appellants:** Leslie Fall
Julie Fall

2. **Respondent:** Allan Dockendorff

Reasons for Order

1. Introduction

Leslie Fall and Julie Fall (the Appellants) appealed Order LD05-321 (Exhibit E-4) issued by the Office of the Director of Residential Rental Property (the Director) on November 29, 2005. The Island Regulatory and Appeals Commission (the Commission) received the Appellants' Notice of Appeal (Exhibit E-5) on December 19, 2005.

The Director's Order and the present appeal concern a rental unit located at 182 York Point Road in Cornwall (the unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Wednesday, January 11, 2006.

2. Background

The Appellants moved into the unit on June 1, 2005 under a verbal month-to-month rental agreement with the Respondent. Rent in the amount of \$800.00 was payable on the first day of every month. No security deposit was required.

In a letter dated June 15, 2005, the Appellants advised the Respondent that they would be moving out of the unit on July 1, 2005 and that, the unit "will be cleared on July 2". The Appellants actually moved out of the unit on June 28, 2005. The Respondent attempted to re-rent the unit and a new tenant took possession on August 1, 2005.

On July 26, 2005, the Respondent filed an Application For Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) pursuant to section 8(d.1) of the **Rental of Residential Property Act** (the **Act**). The Respondent indicated on Form 2 that the Appellants did not properly terminate the lease and \$800.00 was owing for the month of July.

The Director held a hearing on September 22, 2005 pursuant to section 4(2)(d) of the **Act**. On November 29, 2005, the Director, in Order LD05-321, ordered that the Appellants pay rent to the Respondent in the amount of \$800 for the month of July 2005. The Director also ordered that this payment be made on or before December 29, 2005.

3. Decision

The appeal is denied for the reasons that follow.

Sections 11(1), 11(2.1), 18(1) and 18(2) of the **Act** read as follows:

11. (1) A lessee may terminate a rental agreement, by serving on the lessor a notice of termination which complies with section 18.

(2.1) Where premises are let by rental agreement from month to month or week to week,

(a) a notice of termination shall be served by the lessee on or before the due date for the payment of rent; and

(b) service pursuant to clause (a) terminates the rental agreement on the day preceding the day that would otherwise be the next rental payment due date following the date referred to in clause (a). 1999,c.6,s.2.

[emphasis added]

18. (1) A lessor and lessee shall give notice to terminate in writing in the form prescribed by regulation.

(2) A notice to terminate

(a) shall be signed by the person giving the notice, or his agent;

(b) shall identify the premises in respect of which the notice is given;

(c) shall state the date on which the notice is to be effective; and

(d) where notice is given by the lessor, shall state the reasons for the termination. 1988,c.58,s.18.

The Commission finds that the Appellants' June 15, 2005 letter is a notice to terminate the rental agreement. Subsection 11(2.1) clause (a) of the **Act** requires the notice to be served on or before the due date for the payment of rent. In this case, the clause (a) due date was July 1, 2005. Subsection 11(2.1) clause (b) then provides that such service referred to in subsection 11(2.1) clause (a) terminates the rental agreement "on the day preceding the day that would otherwise be the **next** rental payment due date **following** the date referred to in clause (a). This clause (b) termination date would have been July 31, 2005.

The statutory language in subsection 11(2.1) is awkward. However, while awkward, a careful reading makes its meaning clear. The net effect is to provide a minimum of one month's notice for a month-to-month rental agreement. The Appellants' June 15, 2005 letter indicating the unit would be "clear" by July 2 did not provide the required statutory notice. The evidence reveals that the unit was not re-rented until August 1, 2005 and accordingly the Respondent is entitled to receive rent for the month of July from the Appellants.

The Commission notes that the Appellants raised various complaints about the unit at the hearing before the Director and reiterated these complaints at the hearing before the Commission. These complaints were not raised in the June 15, 2005 letter, which tends to suggest that the complaints may only have become an issue after the dispute arose over the issue of rent for the month of July. Nevertheless, the Commission finds that subsection 11(2.1) of the **Act** does not provide the Director or the Commission the legal authority to reduce or adjust the notice requirements. Accordingly, the deficiencies alleged by the Appellants in these complaints do not alter the statutory notice requirement.

The Appellants argued at the hearing before the Commission that the Respondent's first newspaper advertisement to re-rent the unit did not appear until June 26, 2005. The thrust of this argument appears to be that had the Respondent acted more swiftly, the unit could have been re-rented for the month of July. However, it is noteworthy that the June 15, 2005 letter from the Appellants informed the Respondent that the unit would be "clear" on July 2, 2005. Given this information, the Commission finds that the unit could not reasonably be made ready for a new tenant to move in on July 1, 2005.

The Commission hereby denies the appeal and confirms the decision of the Director requiring the Appellants to pay rent to the Respondent in the amount of \$800.00 for the month of July 2005. This payment shall be made on or before February 10, 2006.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Leslie and Julie Fall of Order No. LD05-321 of the Director of Residential Rental Property dated November 29, 2005.

Order

WHEREAS Leslie Fall and Julie Fall (the Appellants) appeal against Order LD05-321 of the Director of Residential Rental Property, dated November 29, 2005;

AND WHEREAS the Commission heard the appeal in Charlottetown on January 11, 2006;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. The appeal is denied.
2. The Appellants shall pay rent to the Respondent in the amount of \$800 for the month of July 2005. This payment shall be made on or before February 10, 2006.

DATED at Charlottetown, Prince Edward Island, this 27th day of January, 2006.

BY THE COMMISSION:

Weston Rose, Commissioner

Norman Gallant, Commissioner

Kathy Kennedy, 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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