



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

**Docket LR05020
Order LR06-03**

IN THE MATTER of an appeal, under
Section 25 of the *Rental of Residential
Property Act*, by Nancy Wood against Order
No. LD05-350 of the Director of Residential
Rental Property dated December 22, 2005.

BEFORE THE COMMISSION
on Wednesday, the 15th day of February,
2006.

Weston Rose, Commissioner
Norman Gallant, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Nancy Wood against Order No. LD05-350 of the Director of Residential Rental Property dated December 22, 2005.

Participants

1. **Appellant:** Nancy Wood
Witnesses: James Graham
Frank Riley

2. **Respondent:** G. Stewart MacKay Real Estate Ltd.
Counsel: J. Gordon MacKay, Q.C.
Witness: Robert H. Roy

Reasons for Order

1. Introduction

Nancy Wood (the Appellant) appealed Order LD05-350 (Exhibit E-8) issued by the Office of the Director of Residential Rental Property (the Director) on December 22, 2005. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-9) on December 28, 2005.

The Director's Order and the present appeal concern an apartment located at 1 Palmer's Lane, Apartment 6, in Charlottetown (the apartment).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Friday, January 27, 2006.

2. Background

On May 1, 2000 the Appellant moved into the apartment. The monthly rent was \$560.00. On July 14, 2005 G. Gordon MacKay Real Estate Ltd. (the Respondent) served the Appellant with a Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) to be effective September 14, 2005. On August 31, 2005 the Appellant moved out of the apartment.

On July 20, 2005 the Appellant filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) with the Director, pursuant to section 8 of the *Rental of Residential Property Act* (the **Act**). In the Appellant's Form 2, she requested that the apartment be inspected, that she be reimbursed \$2,800.00 rent because of no fire exit and no regulation of heat. She also requested that moving expenses of \$335.00 be paid by the Respondent due to "bad faith notice of termination".

On August 2, 2005 the Appellant filed a document dated July 22, 2005 seeking to amend the July 20, 2005 Form 2. In the Appellant's amendment document, she requests the return of \$6,720.00 and an additional \$710.00 for moving and other expenses.

A hearing was held on September 8, 2005 pursuant to section 4(2)(d) of the **Act**. On December 22, 2005 Order LD05-350 was issued by the Director dismissing the Appellant's application.

3. Decision

The appeal is denied for the reasons that follow.

In the Appellant's Form 2, Statutory Conditions 1 and 6 under section 6 of the **Act** are referred to. These Statutory Conditions read as follows:

1. Condition of Premises

The lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.

...

6. Entry of Premises

Except in the case of an emergency, the lessor shall not enter the premises without the consent of the lessee unless the lessor has served written notice stating the date and time of the entry to the lessee at least twenty-four hours in advance of the entry and the time stated is between the hours of 9 a.m. and 9 p.m.

The Commission has had the opportunity to hear the evidence presented by the Appellant and her witnesses and the Respondent and its witness. The Commission finds that when the Appellant contacted the Respondent to complain about problems such as the presence of mice in the apartment in

2004 and no heat in June 2005, the problems were promptly addressed by the Respondent. For her other complaints, the Appellant claims that she brought such complaints to the Respondent's attention and the Respondent denies having received such complaints.

The Commission notes that the Appellant has not provided evidence that she put her other complaints to the Respondent in writing. Nor is there evidence that she contacted Environmental Health for matters other than the 2004 mice complaint (Exhibit E-15) or made application to the Director prior to 2005.

These other issues and complaints raised by the Appellant, including complaints about drafts due to a lack of storm windows, low water pressure, a crack in the bathroom window, poor regulation of heat, electrical shocks, "sparks and fires", toilet and tub problems, the apartment was filthy when the Appellant first moved in, problems with stove burners and problems with the oven switch all ought to have been raised by the Appellant when they first occurred or were first noticed. However, the evidence before the Commission tends to suggest that they were only raised by the Appellant after she was served with the July 14, 2005 Form 4.

The Commission finds that the evidence is insufficient to support the Appellant's claim for return of rent in the amount of \$6,720.00 or any lesser amount.

With respect to the Appellant's claim for moving, utility reconnection and change of address expenses in the amount of \$710.00, the Commission does not have the jurisdiction under the **Act** to consider these expense claims.

Accordingly, the Commission hereby denies this appeal.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Nancy Wood against Order No. LD05-350 of the Director of Residential Rental Property dated December 22, 2005.

Order

WHEREAS Nancy Wood (the Appellant) appeals against Order No. LD05-350 of the Director of Residential Rental Property, dated December 22, 2005;

AND WHEREAS the Commission heard the appeal in Charlottetown on January 27, 2006;

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

IT IS ORDERED THAT

1. The appeal is denied.

DATED at Charlottetown, Prince Edward Island, this 15th day of February, 2006.

BY THE COMMISSION:

Weston Rose, Commissioner

Norman Gallant, Commissioner

Anne Petley, 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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