



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

**Docket LR06003
Order LR06-05**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Randy Quinn and Darlene Quinn against Order No. LD06-019 of the Director of Residential Rental Property, dated January 26, 2006.

BEFORE THE COMMISSION
on Thursday, the 16th day of March, 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 Randy Quinn and Darlene Quinn against Order No. LD06-019 of the Director of Residential Rental Property, dated January 26, 2006.

Participants

1. **Appellants:** Randy Quinn and Darlene Quinn
2. **Respondent:** MacCormack Builders and Apartments Ltd.
Represented by John Cheverie

Reasons for Order

1. Introduction

Randy Quinn and Darlene Quinn (the Appellants) appealed Order LD06-019 (Exhibit E-9) issued by the Office of the Director of Residential Rental Property (the Director) on January 26, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Appellants Notice of Appeal (Exhibit E-10) on January 27, 2006.

The Director's Order and the present appeal concern an apartment located at 269 Norwood Road, Apartment 3, in Charlottetown (the apartment).

The appeal was heard in the Commissions main hearing room in Charlottetown, Prince Edward Island on Friday, February 17, 2006.

2. Background

The Appellants moved into the unit on in July 2004 under a verbal month-to-month rental agreement with the Respondent. Rent in the amount of \$550.00 was payable on the first day of every month. A \$275.00 security deposit was required.

The Appellants applied for a return of the security deposit on August 29, 2005 by way of a Form 2 Application for Enforcement of Statutory or Other

Conditions of Rental Agreement (Exhibit E-1) pursuant to section 8(d.1) of the **Rental of Residential Property Act** (the **Act**). In the Appellants' September 8, 2005 Form 9 Application Re Determination of Security Deposit (Exhibit E-5), the Appellants state that they provided "proper notice" to the Respondent on July 20, 2005 that they would be moving out of the unit effective August 15, 2005. The Respondent attempted to re-rent the unit and a new tenant took possession on October 1, 2005 (Exhibit E-8).

The Director held a hearing on November 8, 2005 pursuant to section 4(2)(d) of the **Act**. On January 26, 2006, the Director, in Order LD06-019, determined that the Appellants failed to serve the Respondent with a proper notice to terminate the rental agreement pursuant to sections 11 and 18 of the **Act**. The Director found that the Appellants owed the Respondent \$225.00 to cover rent from August 16 to August 31 inclusive and also owed \$50.00 for cleaning costs for a total of \$275.00. The Respondent had delivered to the Director the amount of \$303.92 as its determination of the security deposit plus interest. The Director however calculated the security deposit with interest as \$ 278.55. The Director ordered that the overpayment of \$25.37 be returned to the Respondent, that the sum of \$275.00 be payable to the Respondent for unpaid rent plus cleaning costs and the remainder of the security deposit and accrued interest, \$3.55, be paid to the Appellants.

3. Decision

The Commission denies the appeal and orders that the Order of the Director be confirmed 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.

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.

[emphasis added]

The Commission finds that the Appellants on July 20, 2005 provided the Respondent with oral 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 August 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 August 31, 2005.

The Appellants argue that they advised the Respondent in May and June 2005 that they would be moving. The Commission finds that this rather vague advisement does not constitute notice as it did not inform the Respondent when the Appellants would be moving. The **Act** requires the parties to a rental agreement to provide written notice and state the date on which the notice is to be effective. The Appellants did not provide written notice to the Respondents and they did not orally indicate the effective date until July 20, 2005.

A careful reading of the statutory language in subsection 11(2.1) 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' July 20, 2005 oral statement that they would be moving out of the apartment by August 15, 2005 did not provide the required statutory notice. The evidence reveals that the unit was not re-rented until October 1, 2005 and accordingly the Respondent is entitled to receive rent for all of the month of August from the Appellants.

While the Commission is sympathetic to the Appellants' situation, the **Act** is clear and the Commission does not possess the statutory authority to waive the notice requirements.

The Commission finds that the Director correctly calculated the unpaid rent owed by the Appellants to the Respondent for the period August 16 to August 31 inclusive as \$225.00. The Commission also finds that the Director's calculation of \$50.00 for cleaning expenses to be paid to the Respondent was reasonable. The Commission agrees with the Director's findings that the overpayment of \$25.37 be returned to the Respondent and the balance of the security deposit with accrued interest, \$3.55, be paid to the Appellants.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Randy Quinn and Darlene Quinn against Order No. LD06-019 of the Director of Residential Rental Property, dated January 26, 2006.

Order

WHEREAS Randy Quinn and Darlene Quinn (the Appellants) appeal against Order No. LD06-019 of the Director of Residential Rental Property (Director), dated January 26, 2006;

AND WHEREAS the Commission heard the appeal in Charlottetown on February 17, 2006;

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

IT IS ORDERED THAT

1. The appeal is denied.
2. The Director's Order No. LD06-019, dated January 26, 2006, is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, this 16th day of March, 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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