



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

**Docket LR05018
Order LR06-06**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Joe Remedios and Christine Rodgerson against Order No. LD05-325 of the Director of Residential Rental Property, dated December 1, 2005.

BEFORE THE COMMISSION
on Wednesday, the 5th day of April, 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 Joe Remedios and Christine Rodgerson against Order No. LD05-325 of the Director of Residential Rental Property, dated December 1, 2005.

Participants

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|----|------------------------|---|
| 1. | Appellants: | Joe Remedios
Christine Rodgerson |
| | Represented by: | Brian Bradley |
| 2. | Respondent: | Donna Dingwell |

Reasons for Order

1. Introduction

Joe Remedios and Christine Rodgerson (the Appellants) appealed Order LD05-325 (Exhibit E-4) issued by the Office of the Director of Residential Rental Property (the Director) on December 1, 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 residential premises located at 70 Upper Hillsboro Street, in Charlottetown (the unit).

The appeal was initially heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday January 5, 2006. With the consent of the parties, the hearing was adjourned to Thursday February 23, 2006. The parties later consented to a further adjournment and the merits of the appeal were ultimately heard on Wednesday March 1, 2006.

2. Background

The Respondent moved into the unit in September 2003 under a written month-to-month rental agreement with the Appellants. Rent in the amount of \$600.00 was payable on the first day of every month. A \$300.00 security deposit was paid by the Respondent. The Respondent moved out of the unit on May 15, 2005.

The Appellants served a May 21, 2005 Notice of Intention to Retain Security Deposit (Form 8) on the Respondent. On June 6, 2005, the Respondent made application pursuant to section 10(7) of the **Rental of Residential Property Act** (the **Act**) seeking a determination of the disposition of the security deposit. The security deposit and interest payable at the end of the tenancy totalled \$306.50.

The Director held a hearing on July 20, 2005 pursuant to section 4(2)(d) of the **Act**. On December 1, 2005, the Director, in Order LD05-325, determined that the Appellants violated the statutory conditions concerning the condition of the premises and quiet enjoyment. The Director found that the Appellants' failure to repair the sun porch door on the unit left the Respondent with no choice but to vacate the unit as soon as possible. The Appellants were not entitled to the benefit of a proper Notice of Termination because their violations of the statutory conditions of the condition of the premises and quiet enjoyment effectively prevented the Respondent from complying with the notice requirements. The Director determined that the rental agreement was terminated as of April 30, 2005.

The Director did allow the Appellants \$10.00 for a claim for materials and labour for the cleaning of window blinds and ceiling fans.

Accordingly, the Director ordered that the Respondent receive \$296.50 of the security deposit and interest payable and the Appellants receive the remaining \$10.00 for the claim for the cleaning of the window blinds and ceiling fans.

3. Decision

The Commission allows the appeal in part for the reasons which 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]

Section 8(f) of the **Act** reads as follows:

8. *Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the Director shall investigate the matter and may*

(a) inspect the residential premises or have them inspected by an appropriate authority;

(b) prohibit the discontinuance of any services;

(c) authorize the discontinuance of any service and make an appropriate adjustment to the rent;

(d) authorize the subletting or assigning of the rental agreement;

(d. 1) make a finding that an amount of rent is owed or that a security deposit, or part thereof, should be forfeited or returned;

(d.2) order that an amount found to be owed be paid;

(d.3) order that possession of the residential premises be surrendered to the lessor and directing the sheriff to put the lessor in possession;

(e) authorize the termination of the rental agreement in accordance with section 11;

(e.1) make an order respecting the disposal of abandoned or apparently abandoned personal property including the appropriate disposition of any proceeds realized from an authorized sale; or 1998,c.100,s.1.

(f) make such other decision or order as he considers necessary to ensure compliance with, or to remedy a violation of, this Act or the rental agreement. 1988,c.58,s.8; 1990,c.53,s.1; 1998,c.100,s.1.

[emphasis added]

From the evidence before the Commission, it is clear that the Respondent only gave verbal notice to the Appellants in April 2005 that she was terminating the agreement and moving out in the middle of May. The Respondent then stopped payment on the May 2005 rent cheque and moved out of the unit on May 15, 2005. The Commission finds that this notice does not meet the requirements of subsections 11(1), 11(2.1), 18(1) and 18(2) of the **Act**.

The issue before the Commission is therefore whether the Appellants failed to comply with a statutory condition which would allow the Director to exercise the discretion contained in section 8(f) of the **Act**. The Director found that:

The lessors [Appellants] are not entitled to the benefit of a proper Notice of Termination because their violations of the statutory conditions of the condition of the premises and quiet enjoyment effectively prevented the lessee [Respondent] from complying with this. The Officer finds that it is reasonable to determine that the rental agreement between the lessee and the lessors is terminated as of April 30, 2005.

Based on the evidence before the Commission, the Commission finds that the sun porch door was not a secure door during the tenancy of the Respondent. The secure door was between the sun porch and the unit proper. The Respondent contends that the sun porch door was always locked. The Appellants contend that there was no lock on the sun porch door until a new sun porch door was installed in February 2005. In addition, the Appellants contend that the old sun porch door only had a screen in it during the summer months, with a glass insert installed in winter, and thus the door was not secure.

The Commission finds that the presence of a damaged newly replaced sun porch door was a violation of the statutory conditions of the condition of the premises and quiet enjoyment. However, such violation only applied to the sun porch portion of the unit and as such, any remedy granted must be in proportion to the scope of such violation. Since there was a violation of the statutory conditions, the Commission agrees with the Director that the Appellants are not entitled to the benefit of a proper Notice of Termination.

However, the Commission finds that the Respondent had the benefit of living in the unit for the first half of the month of May 2005. The Commission therefore finds that the rental agreement between the Respondent and the Appellant is terminated as of May 15, 2005 being the date the Respondent vacated the unit, rather than the April 30, 2005 termination date as found by the Director.

Accordingly, the Commission finds that the appeal is allowed in part. The Respondent owes the Appellants \$300.00 for the first half of the month of May 2005 during which time she was still living in the unit. The Commission finds that the Appellants may retain \$10.00 for cleaning expenses out of the security deposit with interest of \$306.50. The remaining \$296.50 of the security deposit with interest may be retained by the Appellants in partial satisfaction of rent owed for the first half of the month of May 2005. The Respondent owes the Appellants the remaining sum of \$3.50 for the remainder of the first half of the month of May 2005 rent, said sum payable not later than May 1, 2006.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Joe Remedios and Christine Rodgerson against Order No. LD05-325 of the Director of Residential Rental Property, dated December 1, 2005.

Order

WHEREAS Joe Remedios and Christine Rodgerson (the Appellants) appeal against Order LD05-325 of the Director of Residential Rental Property, dated December 1, 2005;

AND WHEREAS the Commission heard the appeal in Charlottetown on January 5, 2006 and March 1, 2006;

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

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. Rent of \$300.00, representing the rent owed for the first half of the month of May 2005, is owed by the Respondent Donna Dingwell to the Appellants.
3. Out of the security deposit plus interest, totalling \$306.50, the following sums are payable to the Appellants:
 - \$10.00 for cleaning expenses; and
 - \$296.50 for partial satisfaction of rent owing by the Respondent for the first half of the month of May 2005.
3. The Respondent shall pay the Appellants the remaining sum of \$3.50 for the balance of the rent owed for the first half of the month of May 2005, said sum payable not later than May 1, 2006.

DATED at Charlottetown, Prince Edward Island, this 5th day of April, 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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