



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

**Docket LR06009
Order LR06-10**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Gerri Lynn Henderson against Order No. LD06-152 of the Director of Residential Rental Property, dated June 1, 2006.

BEFORE THE COMMISSION
on Tuesday, the 8th day of August, 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 Gerri Lynn Henderson against Order No. LD06-152 of the Director of Residential Rental Property, dated June 1, 2006.

Participants

1. **Appellant:** **Gerri Lynn Henderson**
 Witness: **Philip Henderson**

2. **Respondent:** **Esther McQuaid**

Reasons for Order

1. Introduction

Gerri Lynn Henderson (the Appellant) has appealed Order LD06-152 (Exhibit E-15) issued by the Office of the Director of Residential Rental Property (the Director) on June 1, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-16) on June 21, 2006.

The Director's Order and the present appeal concern the matter of rent owing for a residential unit located at 107 Richard Drive in Charlottetown (the unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday, July 13, 2006.

2. Background

On December 21, 2005, Esther McQuaid (the Respondent) filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) seeking a finding that rent was owed for the months of May, June and one half of July 2005.

The Appellant responded to the Form 2 with a letter received by the Director on January 5, 2006. The Respondent replied with a letter received by the Director on March 23, 2006.

On March 23, 2006, the Director held a hearing pursuant to section 4(2)(d) of the **Rental of Residential Property Act** (the **Act**). The Director determined in Order LD06-152 that the Appellant owed rent to the Respondent in the amount of \$1,882.29 payable on or before July 4, 2006.

3. Decision

The Commission allows the appeal in part and orders that the Appellant pay the sum of \$721.00 to the Respondent for rent owing, representing \$800.00 rent owed for the month of May 2005 minus the sum of \$79.00 that the Respondent already deducted from the Appellant's security deposit.

The following statutory conditions set out under section 6 of the **Act** are of importance in this appeal:

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.

9. *Quiet Enjoyment*

The lessee shall have quiet enjoyment of the residential premises, and shall not be barred from free access to them during the term of the rental agreement.

The following definitions under section 1 of the Act are helpful in this appeal:

(p) *"residential premises" or "premises" includes*

(i) any house, dwelling, apartment, flat, tenement or other place that is occupied or may be occupied by a natural person as a residence or that part of any such place that is or may be occupied by a natural person as a residence, whether such residential premises are furnished, partly furnished or unfurnished,

(ii) land rented as a mobile home site whether or not the lessor also rents that mobile home to the lessee,

but does not include premises exempted by the regulations;

(q) *"residential property" means a building in which, and includes land on which, residential premises are situated;*

In the evidence before the Commission, it was acknowledged by both parties that on one occasion the Respondent entered the unit to perform maintenance and failed to close the outside door upon leaving the unit. The Appellant

arrived back at the unit at the end of the weekend to find the outside door wide open and a stepladder in the kitchen.

On another occasion, the Respondent knocked on the door of the unit at 8:00 a.m. on a Saturday morning to advise the Appellant that chemicals would be applied to the lawn and that their children should not be allowed on the lawn that day. The Appellant's daughter was six years old at the time.

The Appellants state that on one occasion their son, who was in the basement playing darts, observed the Respondent peeking in the basement window. The Respondent states that she was under the deck pulling weeds around the basement window. The Respondent states that she does this once a year.

The Appellants also state that the Respondent was frequently on the property performing yard work and as such they felt their privacy was interfered with when they were outside on the deck.

The Commission is mindful that the rental agreement signed by the parties notes that grass cutting services were included. Accordingly, the Commission finds that the Respondent was entitled to be on the property for the purpose of reasonable yard maintenance without providing notice.

However, the Commission finds that the Respondent did breach the statutory conditions of entry of premises and quiet enjoyment of the premises. The Respondent by: 1. failing to ensure that the outside door of the unit was closed and locked after having entered the premises when the Appellants were absent, 2. requiring the Appellant's children to stay off the lawn for a day because of the application of a lawn fertilizer/herbicide and 3. yard maintenance that was overly intrusive significantly impacted on the Appellant's right to the use of the premises and property.

While it could be argued that quiet enjoyment only extends to the use of the inside of the unit, and not to the yard or outside deck given the definition of "residential premises" or "premises", the Commission rejects such a narrow interpretation. To interpret the definition so narrowly would diminish the right to quiet enjoyment of the immediate outside of "any house, dwelling, apartment, flat, tenement or other place" while not so limiting the enjoyment on a rented mobile home referred to in the second part of the definition. Such a narrow interpretation of "residential premises" or "premises" would appear to be contrary to section 9 of the **Interpretation Act** which reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981, c. 18, s. 9.

While the Respondent did breach statutory conditions, the Appellant and her family continued to remain in the unit. Had the Appellant sought to terminate the rental agreement immediately upon such breach, the Commission would likely be inclined to allow such termination without notice. It is also acknowledged that the Appellant could have applied to the Director for an early termination, but did not do so. However, as the Commission hears this appeal *de novo* the Commission finds that an early termination, with the same notice as if the agreement were on a month to month basis, would be appropriate in the circumstances, given these rather significant breaches of statutory conditions.

The Appellant submits she gave notice in early March 2005 and moved out of the unit at the end of April. The Respondent states that the notice was given in

early April and the Respondent then placed an advertisement to rent the unit on April 6, 2005. The Commission accepts the Respondent's evidence on this point based on the timing of the Respondent's action to place an advertisement for the unit.

The Commission finds that the Appellant owes the Respondent rent in the amount of \$800.00 for the month of May 2005. As the Respondent already deducted \$79.00 from the Appellant's security deposit, the Commission orders the Appellant to pay the Respondent the sum of \$721.00, said sum to be paid on or before August 31, 2006.

In her Notice of Appeal and at the hearing before the Commission, the Appellant stated that at the hearing before the Director, she had a person with her who she intended to call as a witness. During the hearing before the Director, she was informed that it was not necessary to call her witness in. The Appellant expressed considerable concern about this situation.

Without a tape or transcript of the hearing before the Director, it is difficult for the Commission to separate actual facts from the Appellant's sincere perception of the events of said hearing. The Commission, however, wishes to point out that in its own hearings, a party to an appeal is free to call a witness and the Commission will ordinarily hear from that witness first before considering the relevance. After hearing what the witness has to say under oath or affirmation, the Commission then considers the relevance and credibility of the testimony in assigning weight to such oral evidence.

The Commission takes this approach for its own hearings as it is often difficult to be completely certain as to the relevance of proffered testimony until the witness has actually been heard. What a party believes their witness will say and what that witness actually says may sometimes be quite different. The Commission also wishes to point out that it is perfectly acceptable, and sometimes perhaps preferable, to exclude a witness from the hearing until the witness is ready to be sworn or affirmed to give evidence.

However, the Commission notes that the process used in hearings by the Director is ultimately a matter for the Director to decide, subject to legislative requirements and the principles of fairness and natural justice.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Gerri Lynn Henderson against Order No. LD06-152 of the Director of Residential Rental Property, dated June 1, 2006.

Order

WHEREAS Gerri Lynn Henderson (the Appellant) appeals against Order LD06-152 of the Director of Residential Rental Property, dated June 1, 2006;

AND WHEREAS the Commission heard the appeal in Charlottetown on July 13, 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. The rent owed by the Appellant to Esther McQuaid (the Respondent) is hereby reduced from \$1,882.29 to \$721.00 and this sum is payable on or before August 31, 2006.

DATED at Charlottetown, Prince Edward Island, this 8th day of August, 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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