



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR06017
Order LR07-01**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Ken Zakem against Order No. LD06-320 of the Director of Residential Rental Property, dated December 8, 2006.

BEFORE THE COMMISSION
on Wednesday, the 24th day of January, 2007.

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 Ken Zakem against Order No. LD06-320 of the Director of Residential Rental Property, dated December 8, 2006.

Participants

1. Appellant: Ken Zakem

 2. Respondents: Trevor Campbell and JoAnne MacPhail
- Witness: Russell Smith

Reasons for Order

1. Introduction

Ken Zakem (the Appellant) has appealed Order LD06-320 (Exhibit E-7) issued by the Office of the Director of Residential Rental Property (the Director) on December 8, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-8) on December 18, 2006.

The Director's Order and the present appeal deal with the status of a security deposit for a rental unit located at 19 Selkirk Crescent in Charlottetown (the rental unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, January 15, 2007.

2. Background

The Respondents moved into the rental unit on January 1, 2006. The rent was \$700.00 payable on the first day of each month. A \$200.00 security deposit was paid. The Respondents vacated the rental unit on May 31, 2006.

On June 28, 2006 Trevor Campbell and JoAnne MacPhail (the Respondents) made an application pursuant to subsection 10(7) of the *Rental of Residential Property Act*, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**), seeking a "determination on the disposition of a security deposit". Simply put, the

Respondents had requested that the Director decide who will keep the security deposit.

On June 28, 2006, the Director granted an extension to the Appellant for the serving of the Notice of Intention to Retain Security Deposit (Form 8) as permitted under subsection 10(5) of the **Act**. Also on June 28, 2006, the Director granted an extension to the Respondents for the filing of the Application Re Determination of Security Deposit (Form 9) as permitted under subsection 10(7) of the **Act**.

On July 18, 2006, the Appellant filed with the Office of the Director the security deposit, with accrued interest, in the amount of \$200.83.

The Director held a hearing on August 24, 2006, pursuant to section 4(2)(d) of the **Act**. In Order LD06-320, the Director determined that the disputed security deposit, with interest, of \$200.83 be returned to the Respondents upon the expiry of the appeal period.

3. Decision

The Commission denies this appeal for the reasons that follow.

When did the Respondents give notice?

The evidence before the Commission establishes that the Respondents were late in providing the Appellant with their notice to terminate the rental agreement.

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.

There is no evidence of a written rental agreement before the Commission. Rent was agreed to be paid on a monthly basis. Accordingly, the oral rental agreement between the parties is on a month to month basis.

In the present case, the notice to terminate should have been given no later than May 1, 2006 to allow the rental agreement to be terminated on May 31, 2006.

The Respondents testified that they folded the notice and fastened the rent cheque for the month of May 2006 to the notice with a paper clip. They put the notice and cheque in the Appellant's mailbox on May 1, 2006. However, later that day, as they believed that no one was home, they retrieved the notice and cheque. The Respondents testified that they put the notice with the attached cheque inside the Appellant's home on May 2, 2006.

The Commission notes that the Respondents' testimony appears to be corroborated by Exhibit E-5. Exhibit E-5 shows that on May 4, 2006, a cheque for \$700.00 cleared Ms. MacPhail's bank account.

The Appellant states that he first saw the notice on May 8, 2006. At the hearing before the Commission, the Appellant filed several documents (Exhibit E-10), including a January 5, 2007 letter from Mary Dow-Zakem. Ms Dow-Zakem states in her letter that she first saw the notice on May 8, 2006.

The Commission finds that the notice and the May rent cheque appear to have become separated inside the Appellant's home as it appears that neither the Appellant nor Ms. Dow-Zakem actually read the notice until May 8, 2006.

The Commission finds that the Respondents gave the Appellant notice to terminate the rental agreement on May 2, 2006. However, May 2 is one day late.

Is rent owing for June 2006?

In Order LD06-320, it is stated in part:

The Residential Rental property Officer acknowledges that there is a responsibility on the part of lessors to 'make ready' the rental unit in between one lessee vacating and another one moving in. Sometimes this involves a quick touch up here or there, some minor repairs and some quick cleaning. In some cases if the lessor cannot perform such duties he may compensate the new tenants. The important factor is that the lessor receives possession from his former tenants and then gives possession to his new tenants in a timely fashion.

The Residential Rental Property Officer determines that in this case the actions of the lessor were more than to 'make ready' the rental unit for a new tenant. According to his testimony he painted the rental unit as opposed to a quick touch up. He also replaced the grouting of the bathroom floor as opposed to cleaning. His actions were such that the

rental unit was converted from one rental unit into two. Therefore, the Residential Rental Property Officer determines that the actions of the lessor were greater than just to 'make ready' the rental unit.

The Residential Rental property Officer determines that the lessor took possession of the rental unit and did renovations. In taking possession of the rental unit he terminated the rental agreement he had with the lessees. Therefore, the Residential rental property Officer determines that the lessees' are not liable for any rent owing for June 2006. As a result, the disputed security deposit in the amount of \$200.83 shall be returned to the lessees.

At the hearing before the Commission, the Appellant submitted that Order LD06-320 gave an inaccurate impression of the work actually performed on the rental unit. The Appellant filed letters and invoices (Exhibit E-10) to set the record straight.

The Commission notes that it was bathroom wall grout, not floor grout, which was "refreshed", a thirty to forty minute job according to the tile contractor. The interior painting work consisted of the ceiling of one room, prime and paint of two doors and the "fix and paint" of the bathroom walls, for a total interior painting time of three hours, according to the painting contractor. The "privacy door" was installed by the Appellant and a friend on June 3, 2006 and took six hours. The invoice submitted by the Appellant reveals that a deadbolt type lock was purchased; presumably for this door.

The Commission finds that the renovations of themselves did not take much time. The re-grouting and painting would not of themselves have significantly prevented possession of the rental unit.

However, the installation of the "privacy door" is another matter. The evidence before the Commission suggests that the purpose of this door was to take one unit and effectively convert it into two units. In his testimony, the Appellant noted that he wanted the unit "...suitable for two singles".

The Respondents' witness testified that, while he was helping the Respondents to move out, he observed plumbing recently installed for a "mini-fridge with sink".

The Respondents testified that a new tenant started to move her possessions in to the rental unit in late May 2006.

The Commission finds that, before the Appellant could convert the rental unit from one unit to two units, he would first have to take possession of the unit. By taking possession of the unit, he terminated the rental agreement.

As the actions of the Appellant terminated the rental agreement, the Commission finds that the Respondents do not owe rent for the month of June 2006. Accordingly, the Commission hereby orders that the security deposit and accrued interest, in the amount of \$200.83, be returned to the Respondents following the expiry of the statutory appeal period.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Ken Zakem against Order No. LD06-320 of the Director of Residential Rental Property, dated December 8, 2006.

Order

WHEREAS Ken Zakem (the Appellant) has appealed against Order No. LD06-320 of the Director of Residential Rental Property, dated December 8, 2006;

AND WHEREAS the Commission heard the appeal in Charlottetown on January 15, 2007;

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

IT IS ORDERED THAT

1. The appeal is denied.
2. The security deposit and accrued interest, in the amount of \$200.83, be returned to the Respondents following the expiry of the statutory appeal period.

DATED at Charlottetown, Prince Edward Island, this 24th day of January, 2007.

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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