



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR07007
Order LR07-04**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by PEI Apartments Inc. against Order No. LD07-055 of the Director of Residential Rental Property, dated February 27, 2007.

BEFORE THE COMMISSION
on Friday, the 27th day of April, 2007.

Maurice Rodgerson, Chair
Norman Gallant, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by PEI Apartments Inc. against Order No. LD07-055 of the Director of Residential Rental Property, dated February 27, 2007.

Participants

1. Appellant: PEI Apartments Inc.

Tasha Johnston
Sheldon Lyle

2. Respondents: Matt Matheson
Woodrow Bishop
Stephen MacDonald
Matt Simmons
James Rayner

(not present at the hearing)

Reasons for Order

1. Introduction

PEI Apartments Inc. (the Appellant) has appealed Order LD07-055 (Exhibit E-2) issued by the Office of the Director of Residential Rental Property (the Director) on February 27, 2007. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-1) on March 19, 2007.

The Director's Order and the present appeal deal with an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) on February 5, 2007 pursuant to section 8 of the *Rental of Residential Property Act*. This Form 2 application was made by Matt Matheson, Woodrow Bishop, Steven MacDonald, James Raynor and Matt Simmons (the Respondents) and concerns residential premises located at 48 Weymouth Street in Charlottetown (the rental premises). The Form 2 application seeks a termination of the rental agreement and a return of rent.

The appeal was heard in the Commission's Boardroom in Charlottetown, Prince Edward Island on Tuesday, April 10, 2007.

2. Background

On October 25, 2006 the Respondents Matt Matheson and Woodrow Bishop signed a fixed term rental agreement beginning October 25, 2006 and ending on September 30, 2007. Under the agreement, the rent was \$860.00 per month. The Respondents paid a security deposit of \$860.00.

In their Form 2 application, the Respondents sought the following:

*“return of rent 4 months x 865\$ per month = 3460\$
And termination of rental agreement by Feb 28th 2007.”*

The Director held a hearing on February 13, 2007, pursuant to section 4(2)(d) of the **Act**. In Order LD07-055, issued on February 27, 2007, the Director determined that the rental agreement between the parties was terminated as of February 28, 2007. Rent in the amount of \$344.00 was found owing by the Appellant. Payment to the Respondents was to be made on or before March 23, 2007.

3. Decision

In the Notice of Appeal, the Appellant states the following reasons for appeal:

- [1] The tenants had vacated the property after the ordered date, and have not paid rent for these days;*
- [2] The tenants (and/or their guests) caused damage to the property which exceeds the deposit paid;*
- [3] The tenants did not clean or return keys after vacating the property.*

At the hearing before the Commission, none of the Respondents were in attendance. Commission staff reviewed on the record the attempts to contact the Respondents at their last known address and telephone number. The Notice of Appeal Hearing mailed to the Respondents at their last known address was returned by Canada Post. The telephone number on file was no longer in service, according to Bell Aliant. A Canada 411 search revealed no new number for any of the Respondents. A notice concerning the hearing was placed on the Commission's Public Hearing Schedule contained in the Commission's public website.

At the hearing, the Commission set aside the Appellant's second and third reasons for appeal noted above for this present appeal. The reason why these reasons were set aside is that Order LD07-055 did not address these issues. While the Appellant stated that a Form 8 has been filed with the Director concerning those issues, these issues are not presently before the Commission. For these issues to be before the Commission, the Appellant would need to make an application to the Director, the Director would need to issue an Order concerning those issues, and the Appellant would need to then appeal that Order to the Commission.

With respect to the first reason for appeal, the Appellant's representatives testified that the Respondent Matt Simmons stayed in the rental premises until March 6, 2007. They do not know if any of the other Respondents remained in the residential premises beyond the February 28, 2007 termination date. The Appellant had switched over the electricity for the residential premises on March 1, 2007 and put furnace oil in the tank on March 2, 2007.

The Appellant seeks the following:

1. \$138.71 pro-rated rent for 6 days
2. \$15.18 for electricity pro-rated for 6 days based on previous bills submitted by the Respondents
3. \$84.55 for furnace oil pro-rated for 6 days based on previous bills submitted by the Respondents

The Appellant notes that it has not, to date, paid the \$344.00 ordered by the Director in Order LD07-055.

The Commission hereby varies the terms of Order LD07-055 in part. The Commission finds that there was at least one of the Respondents living in the residential premises beyond the ordered termination date of the rental agreement. The pro-rated calculations prepared by the Appellant are reasonable.

The Commission finds that the Respondents owe \$238.44 to the Appellant. Accordingly, the Commission hereby orders that the \$344.00 payable by the Appellant to the Respondents in Order LD07-055 be reduced to \$105.56 as an offsetting of the sum owed by the Respondents to the Appellant.

The Commission wishes to point out that it finds that there was no error of fact or law in Order LD07-055. Rather, the Commission, hearing the matter *de novo*, heard evidence which was not before the Director and which could not have been presented to the Director on February 13, 2007.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by PEI Apartments Inc. against Order No. LD07-055 of the Director of Residential Rental Property, dated February 27, 2007.

Order

WHEREAS PEI Apartments Inc. (the Appellant) has appealed against Order No. LD07-055 of the Director of Residential Rental Property, dated February 27, 2007;

AND WHEREAS the Commission heard the appeal in Charlottetown on April 10, 2007;

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

IT IS ORDERED THAT

1. Order No. LD07-055 is hereby varied as a result of new evidence heard by the Commission *de novo*;
2. The Appellant [lessor] shall pay the sum of \$105.56 to the Respondents [lessees] (Matt Matheson, Woodrow Bishop, Steven MacDonald, James Raynor and Matt Simmons) for the reasons detailed in the annexed Reasons for Order.

DATED at Charlottetown, Prince Edward Island, this 27th day of April, 2007.

BY THE COMMISSION:

Maurice Rodgerson, Chair

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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