



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR07014
Order LR07-06**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Kristina Perkins against Orders No. LD07-175 and LD07-176 of the Director of Residential Rental Property, dated July 27, 2007.

BEFORE THE COMMISSION

on Wednesday, the 26th day of September, 2007.

Weston Rose, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Kristina Perkins against Orders No. LD07-175 and LD07-176 of the Director of Residential Rental Property, dated July 27, 2007.

Participants

1. Appellant: Kristina Perkins
2. Respondent: Don Martin

Reasons for Order

1. Introduction

Kristina Perkins (the Appellant) has appealed Orders LD07-175 and LD07-176 (Exhibits E-7 and E-22) issued by the Office of the Director of Residential Rental Property (the Director) on July 27, 2007. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-8) on August 15, 2007.

The Director's Order LD07-175 concerns an Application Re Determination of Security Deposit (Form 9) filed by the Appellant on February 9, 2007 pursuant to subsection 10(7) of the *Rental of Residential Property Act*, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**). This application disputes the reasons given in the Notice of Intention to Retain Security Deposit received by the Appellant from Don Martin (the Respondent) on January 26, 2007.

The Director's Order LD07-176 concerns an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) filed by the Respondent on March 5, 2007 pursuant to section 8 of the **Act**. This application requested a finding that rent was owed and an order that an amount found to be owed be paid.

This appeal concerns residential premises located at 23 Ashburn Crescent, Apartment #21 in Charlottetown (the apartment).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Friday, September 14, 2007.

2. Background

The Appellant moved into the apartment in September 2004 under a one year standard form rental agreement dated December 29, 2004. Rent initially was \$575.00 per month and was later increased to \$600.00 per month. A security deposit of \$287.50 was paid. Following the expiry of the written agreement, no new written agreement was entered into and the tenancy continued on a month to month basis. The Appellant moved out of the apartment during the latter half of January 2007.

The Respondent filed a Notice of Intention to Retain Security Deposit on January 26, 2007. The Appellant then responded with an Application Re Determination of Security Deposit filed on February 9, 2007 seeking retention of the security deposit. The Respondent filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement on March 5, 2007 claiming \$600.00 for rent owing.

The Director held two rental hearings on April 18, 2007, pursuant to section 4(2)(d) of the **Act**. On July 27, 2007, the Director issued two Orders pertaining to these matters.

In Order LD07-175 the Director ordered that the Respondent receive a payment totalling \$301.26, representing the security deposit plus interest.

In Order LD07-176 the Director ordered that the Appellant pay the Respondent on or before August 28, 2007 \$600.00 for rent owed for the month of February 2007.

3. Decision

The Commission allows the appeal of Order LD07-175 and denies the appeal of Order LD07-176 for the reasons that follow.

The Appellant's Evidence Before the Commission

The Appellant is a student at the Atlantic Veterinary College. She told the Commission that she had lived in the apartment from October 2004 to January 2007. The Appellant stated that the Respondent had initially asked her if she had a cat. She informed him that she did not. Seeing that other tenants in the building did have cats, the Appellant got a cat in January 2006. In December 2006 she received a letter from the Respondent informing her that she either had to get rid of the cat or leave. The Appellant went home for the Christmas holidays and returned in early January 2007. She then informed the Respondent that she would be leaving the apartment later that month. The Respondent told her he had thought it over and that she could stay as she was a good tenant.

The Appellant told the Commission that she had occasional problems with the zone valve for the hot water system. When these problems occurred, the zone valve would have to be opened or closed manually.

The Appellant moved out of the apartment during the latter half of January 2007. The Appellant submits that she had a verbal agreement with the Appellant that she would not be required to pay rent for February. The Appellant states that, before she had vacated the apartment, she was informed by building superintendent Paula Carragher that a window was found open. A short time later the Appellant received a message from the Respondent that the pipes had frozen.

The Appellant informed the Commission that the Respondent told the rental officer during the hearing that he was not seeking the claim for carpet replacement as the carpet did not need to be replaced. The Appellant also advised the Commission that the plumbing bill was not \$200.00. Rather, the bill was for \$157.94 as supported by Exhibit E-15, a January 29, 2007 invoice from Mr. Plumber.

The Respondent's Evidence Before the Commission

The Respondent told the Commission that the Appellant had always been a model tenant. He does allow tenants with cats in units that have not been updated. However, as the Appellant did not initially have a cat, her apartment was fully updated.

The Respondent stated that he thought things over and in early January advised the Appellant that she could stay. She advised him she was leaving. He advised her that she had to give notice and that she would have to pay rent for February. She said no, and a heated discussion followed.

The Respondent noticed a window open on January 17, 2007. He phoned Paula Carragher and asked her to close it. The next day Ms. Carragher advised him that there was a water leak. The Respondent stated that he does not know who left the window open. He stated that the plumber advised him that the pipe would freeze fast in the extreme cold. The Respondent noted that the older couple who lived in the apartment below had been cold for two days.

The Respondent told the Commission that he had advised the rental officer that the carpeting was fine. The wear on the carpeting was reasonable considering the apartment had been occupied for two and a half years.

The Respondent noted that the zone valves would sometimes stick at the beginning of the heating season, as the heating system was unused over the summer months.

Order LD07-175

In Order LD07-175 the Director ordered that the Respondent receive a payment totalling \$301.26. The Commission allows the Appellant's appeal of Order LD07-175 and orders that the full security deposit, with interest, be returned to the Appellant.

The evidence before the Commission as to what actually caused the pipes to freeze is anecdotal and full of hearsay. The Commission accepts that the window had been open and was later closed. The Commission accepts that the pipes froze during a very cold time of year. The Commission accepts that there were some occasional past problems with the zone valve sticking. The Commission did not have the testimony of the plumber who performed the work, the insurance adjuster who inspected the damage or the neighbours who reportedly were cold. The Respondent stated in his evidence that he did not know who had opened the window. The Commission is not aware that the Director had any more evidence than the Commission to support the findings contained in Order LD07-175. On the balance of probabilities, the Commission finds that the weight of evidence before it is insufficient to support a finding that the Appellant was responsible for the frozen pipes. The Commission therefore cannot accept the Director's determination of liability.

In addition, there was no explanation in Order LD07-175 as to how the damages of \$3200.00 were calculated. In the Respondent's Notice of Intention to Retain Security Deposit, the following costs were set out:

Mr. Plumber Approx Est \$200.00
Replace carpet & underpad – Approx Est \$2500.00
Insurance deductible \$500.00
Loss of Rent Feb 1 - \$600.00

The total claimed amounted to \$3800.00. It appears that the Director subtracted the loss of rent claim of \$600.00 in order to state the following:

1. damage to the rental unit and complex caused when a window was left open in the unit -- \$3200.00. Decision: Based on the information and evidence before me, the Residential Rental Property Officer determines that the information and evidence does support the lessor's claim.

The Commission notes that, at the time of hearing the matter in April 2007, the Director had the actual invoice from Mr. Plumber of \$157.94 and thus the estimate of \$200.00 was no longer valid. This would support a small reduction in the Respondent's claim.

More significantly, according to the sworn testimony of both the Respondent and the Appellant, the Respondent had informed the rental officer that the carpeting did not need to be replaced. This would support a reduction of the Respondent's claim in the amount of \$2500.00.

The Commission also questions why a claim should be supported for both an insurance deductible and the total specified damages. If the insurance company accepted the claim, the deductible would have to be paid and the insurance company would then cover the remainder of the damages. However, if the insurance company refused to pay the claim, all the specified damages of the plumber's bill and of any replacement carpeting, underpad and labour would then have to be paid 'out of pocket'.

Accordingly, the Commission cannot accept the Director's calculation of damages. Any further decision concerning liability and quantum of damages are thereby left for consideration in another forum.

The Commission allows the Appellant's appeal and orders that the security deposit, with interest, in the amount of \$301.26 be returned to the Appellant.

Order LD07-176

In Order LD07-176 the Director ordered that the Appellant pay the Respondent \$600.00 for rent owed for the month of February 2007. The Commission denies the Appellant's appeal of Order LD07-176. The Commission orders the Appellant to pay the Respondent \$600.00 for rent for February 2007.

The Appellant's testimony is that the parties agreed that she would not have to pay the rent for February 2007. The Respondent states that there was no such agreement. The Appellant has provided a letter from her friend Julia Servaites to support her position. However, the Commission cannot give this letter significant evidentiary weight. Ms. Servaites did not appear as a witness before the Commission and therefore her letter could not be tested by cross-examination or clarified through questions from the Commission panel.

However, it is not necessary to find whether or not there was an oral agreement that would release the Appellant from the requirement to pay rent for February 2007. 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.

The above legislative requirements are mandatory, that is to say, there is no option, excuse or exemption to the requirement to give notice.

The Appellant gave the Respondent written notice in a letter addressed to "Paula" (Paula Carragher) dated January 5, 2007. Per clause 11(2.1)(a) of the **Act**, the notice of termination shall be served on or before the due date for the payment of rent. Given the facts of this appeal, this would be February 1, 2007. Per clause 11(2.1)(b), the rental agreement would be terminated on the day preceding the day that would otherwise be the next rental payment due date following the date referred to in clause (a). The next rental payment due date following February 1 would be March 1, and accordingly the rental agreement terminated on February 28, 2007.

Accordingly, the Commission finds that the rental agreement between the parties terminated on February 28, 2007 and the Appellant is therefore required to pay rent for the month of February. The Appellant's appeal of Order LD07-176 is hereby denied and Order LD07-176 is hereby confirmed. The Appellant shall pay the Respondent the sum of \$600.00 immediately.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Kristina Perkins against Orders No. LD07-175 and LD07-176 of the Director of Residential Rental Property, dated July 27, 2007.

Order

WHEREAS Kristina Perkins (the Appellant) has appealed against Orders LD07-175 and LD07-176 of the Director of Residential Rental Property dated July 27, 2007;

AND WHEREAS the Commission heard the appeal in Charlottetown on September 14, 2007;

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

IT IS ORDERED THAT

1. The appeal of Order LD07-175 is allowed and the security deposit, with interest, in the amount of \$301.26 shall be returned to the Appellant.
2. The appeal of Order LD07-176 is denied and the Appellant shall immediately pay Don Martin (the Respondent) \$600.00 for rent owed for the month of February 2007.

DATED at Charlottetown, Prince Edward Island, this 26th day of September, 2007.

BY THE COMMISSION:

Weston Rose, 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.

IRAC144A(99/2)