



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR07016
Order LR07-08**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by David Bell and Jamie-Lynn Dollar against Order No. LD07-249 of the Director of Residential Rental Property, dated October 26, 2007.

BEFORE THE COMMISSION

on Tuesday, the 11th day of December, 2007.

Weston Rose, Commissioner
David Holmes, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by David Bell and Jamie-Lynn Dollar against Order No. LD07-249 of the Director of Residential Rental Property, dated October 26, 2007.

Participants

1. Appellants: David Bell
Jamie-Lynn Dollar (not present at the hearing)

2. Respondent: Corey Frizzell

Reasons for Order

1. Introduction

David Bell and Jamie-Lynn Dollar (the Appellants) have appealed Order LD07-249 (Exhibit E-20) issued by the Office of the Director of Residential Rental Property (the Director) on October 26, 2007. The Island Regulatory and Appeals Commission (the Commission) received the Appellants' Notice of Appeal (Exhibit E-21) on November 13, 2007.

The Director's Order LD07-249 concerns an application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) filed by the Appellants on August 27, 2007 pursuant to section 8 of the *Rental of Residential Property Act*, R.S.P.E.I. 1988, Cap. R-13.1 (the *Act*). The remedy sought which is relevant to this present appeal is a request for an order to authorize the termination of the rental agreement.

This appeal concerns residential premises located at 33 MacArthur Drive in Cornwall (the unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday, November 29, 2007.

2. Evidence

The parties signed a fixed term rental agreement and paid a security deposit of \$450.00 on July 23, 2007. The agreed rent was \$590.00 payable on the first day of each month. The Appellants were to move into the unit on August 15, 2007 and they paid pro-rated rent for August 2007. The Appellants moved into the unit on August 10, 2007.

The Appellants' evidence is that they moved in early but paid extra rent. After 18 days, they wanted to move out. The unit is located in the basement of a split entry house. Their complaints included noise from the stereo in the upstairs unit occupied by the Respondent, "threats" from the Respondent concerning a demand to pay an extra \$30.00 per month for parking for the extra car, that the Respondent was confrontational on several occasions and intimidating to Ms. Dollar and that they had problems controlling heat. On one occasion, the Appellants called the RCMP concerning the noise complaint.

The Appellants filed their Form 2 application on August 27, 2007 in order to terminate the rental agreement. They did not pay rent on September 1, 2007. On September 2, 2007 they received a Notice of Termination by Lessor of Rental Agreement (Form 4) requiring them to vacate the unit on or before September 22, 2007.

The Appellants moved out of the unit on September 8, 2007 with a U-Haul truck parked in the driveway. They met the Respondent in the driveway on that date while they were in the process of moving their possessions. They retained the keys as they believed they had the right to occupy the unit until September 22, 2007 and they wished to return to take pictures of the unit. When they returned to take pictures they found that the locks to the unit had been changed.

The Respondent told the Commission that a programmable thermostat enclosed in a box was used for the regulation of heat. He had shown it to the Appellants before they rented the unit. Since the Respondents lived in the unit during part of August and early September he questioned why the Appellants would be cold unless they left the windows opened.

The Respondent explained that he informed the Appellants that it was not a soundproof house. The Respondent disputed the Appellants' claim that the stereo was loud.

The Respondent explained that the matter of two cars was simply a misunderstanding and he merely asked the Appellants if they would pay an extra \$30.00 per month. They declined and he said "OK". In the Respondent's words at the hearing: "...dead issue, a learning experience and I moved on".

The Respondent told the Commission that he left the Province on September 12, 2007 and returned on September 22, 2007. While he was away, he discussed the matter on the telephone with the co-owner of the house. The co-owner arranged for the locks to be changed, with a receipt dated September 17, 2007. The reason the locks were changed is that the upstairs unit could be accessed by anyone with keys for the basement unit, due to the split entry design of the house. The Respondent stated that he did not realize the Appellants were moving out on September 8, 2007. Under questioning, he did acknowledge that he saw the Appellants and the U-Haul truck on September 8, 2007.

On several occasions during the hearing the Respondent told the Commission that he was not a confrontational person.

3. Decision

The Commission allows the appeal for the reasons that follow.

The Commission finds Mr. Bell to be a credible witness. However, the Commission, having heard the Respondent, finds that he is not a credible witness with respect to the facts of this matter under appeal. The Respondent's memory appeared to be sharp when recalling events to support his position, but his recall was less than clear on other occasions. He had explained that he had not been aware that the Appellants moved out on September 8, 2007. Yet, under questioning he then admitted that he saw the Appellants in the driveway with their U-Haul but he added that he thought they were just moving a few items.

In spite of the Respondent's repeated assurances that he was "not a confrontational person", the Commission has on file his email dated on or about September 4, 2007 and addressed to Ms. Dollar. The exact date and time of this email is unclear from the printed Windows Live Hotmail record, however, Ms. Dollar responded to it on September 4, 2007. The Commission finds that the words chosen by the Respondent in his email are of a very confrontational and intimidating tone. While it is understandable that the Respondent was likely very upset due to the unpaid rent, the Respondent's email seriously clashes with his repeated assurances to the Commission that he was not a confrontational person, thus casting doubt on his credibility in this matter. Further, the email evidence provides objective evidence to bolster the Appellant's claim that the Respondent was confrontational and intimidating to Ms. Dollar on several occasions. The Commission finds that this confrontational and intimidating attitude seriously interfered with the Appellants' quiet enjoyment of the unit in a fashion which would make any noise that may have been created by the Respondent's stereo seem of a most trivial nature.

The Commission finds that the Appellants moved out of the unit on September 8, 2007 and the Respondent was aware, or ought to have been aware, that they had moved out. The Commission finds that the Appellants kept the keys, demonstrating their intention to retain possession. The Commission finds that the September 17, 2007 date on the receipt for the locks is merely the date of the receipt. The Commission finds that the locks had been changed on or before September 14, 2007 as the Appellants could not enter the unit on that date. The Commission finds that the Respondent, through the action of having changed the locks and not providing a new set of keys, terminated the rental agreement on or before September 14, 2007.

The appeal is allowed. The Commission hereby reverses the Director's order and finds that the rental agreement was terminated effective September 14, 2007.

For greater certainty, the Commission wishes to point out that this Order makes **no** determination on any issues concerning the security deposit.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by David Bell and Jamie-Lynn Dollar against Order No. LD07-249 of the Director of Residential Rental Property, dated October 26, 2007.

Order

WHEREAS David Bell and Jamie-Lynn Dollar appeal against Order No. LD07-249 of the Director of Residential Rental Property, dated October 26, 2007;

AND WHEREAS the Commission heard the appeal in Charlottetown on November 29, 2007;

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

IT IS ORDERED THAT

1. The appeal is allowed.
2. The rental agreement was terminated effective September 14, 2007.

DATED at Charlottetown, Prince Edward Island, this 11th day of December, 2007.

BY THE COMMISSION:

Weston Rose, Commissioner

David Holmes, 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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