



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

**Docket LR08-006
Order LR08-06**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Aaron Nutbrown against Order No. LD08-151 of the Director of Residential Rental Property, dated March 12, 2008.

BEFORE THE COMMISSION
on Tuesday, the 20th day of May, 2008.

Maurice Rodgeron, Chair
John Broderick, Commissioner
Ernest Arsenault, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Aaron Nutbrown against Order No. LD08-151 of the Director of Residential Rental Property, dated March 12, 2008.

Participants

1. **Appellant:** Aaron Nutbrown, representing himself
Witnesses: Audrey Butler
Jennifer Nutbrown
Bonnie Butler

2. **Respondent:** Virginia Winter, representing herself

Reasons for Order

1. Introduction

Aaron Nutbrown (the Appellant) has appealed Order LD08-151 (Exhibit E-30) issued by the Office of the Director of Residential Rental Property (the Director) on March 12, 2008. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-31) on April 1, 2008.

The Director's Order LD08-151 concerns an application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) filed by Virginia Winter (the Respondent) on June 26, 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 is a request for a finding that rent is owed, an order that an amount found to be owed be paid and other items including back utilities and furnace oil.

This appeal concerns residential premises located at 7040 Pt. Pleasant Road in Murray River (the premises).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, April 28, 2008.

2. Background

In the Director's Order LD08-151, it was determined that there was a monthly rental agreement between the parties commencing November 1, 2006 at \$750.00 per month rent for the months of November 2006 to March 2007 inclusive. In addition, the Director agreed with the Respondent's rent claim for the month of April 2007 as the Appellant did not give the required notice of termination. The Director reduced the rent owing by \$30.00 (3 hours @ \$10.00 per hour) for work performed by the Appellant. Accordingly, the Director found that the Appellant owed the Respondent a total amount of rent of \$4470.00.

In the evidence heard by the Commission, it is clear that the Appellant resided in the premises for the months of November and December 2006 and January, February and March 2007. There was no written rental agreement between the parties.

The Appellant contends that he was house sitting and paid his own utilities. He stated that the Respondent's dogs remained on the premises and were cared for by him. He stated that the Respondent would frequently visit the premises and do her laundry there. He also did work on the property based on a "to do" list prepared by the Respondent.

The Respondent contends that she initially "hired" the Appellant to do work on the premises at the rate of \$10 per hour for "documented work". He started to work on the premises, and then asked if he could move a few things in. The Respondent thought this was so he could stay over on occasion if he was working late. He ended up moving in "lock, stock and barrel". Work was not getting done. In mid December a couple with a child expressed interest in the property. The Respondent agreed to allow the Appellant to remain in the premises if he completed the work by the end of December 2006, and paid \$750.00 per month rent plus utilities starting January 2007. Additional work performed could be used as a "barter credit" to offset the rent. However, much of the requested work was not being performed and the rent was not paid.

3. Decision

The Commission allows the appeal in part.

The evidence before the Commission suggests that the parties entered into a very loose, informal, unwritten arrangement each with a different understanding as to the duties and obligations of the Appellant. Unfortunately, this arrangement constitutes a "textbook" illustration of the importance of obtaining a written agreement, especially when one or both parties is of the understanding that work on the premises is to be bartered, in whole or in part, for rent.

For the months of November and December 2006, the Commission finds that the arrangement amounted to that of a house-sitter/handyperson who provided a security presence on the premises, performed some work based on the "to do list" while the owner continued to also maintain an occasional presence on the premises. Accordingly, in consideration for work performed on the premises, the Commission finds that there is no rent owing for these two months.

On or about the middle of December 2006, after another couple expressed interest in the premises, it appears that the Respondent decided to drive a harder bargain. The Commission finds that the parties orally agreed that, starting January 1, 2007, rent would be charged in the amount of \$750.00 per month, plus utilities, with a credit given for additional work performed.

The Commission takes particular notice of the email from the Respondent to the Appellant, dated January 26, 2007. This email is of a friendly tone, unlike later emails where it is crystal clear that the landlord/tenant relationship had dramatically deteriorated. The last portion of this email reads:

did [sic] you get to pay the maritime electric bill, and can we get settled up on the rent,?? b/c i [sic] have to pay taxes which are now overdue...and february [sic] is also coming up, and I don't want to get too far behind on this or it will be hard to catch up...

hopefully [sic] things are going well over there..i [sic] know it's really windy, and I am worried about things there..but i [sic] am sure you are looking at after it all really good ...how are things with your puppy? And the other dogs...i [sic] will probably be bringing lucky over mid to late next week b/c I have this big show next w/e, and it will be hard to have her here..but she is doing better..

ok [sic] take care..pls email me back so that i [sic] know you rec'd this one..regards, Virginia.

Of significance is that there is no email from the Appellant in response that denies that rent was owed.

Accordingly, the Commission finds that the Appellant owes rent for the months of January, February and March 2007. In addition, as the Appellant did not give the Respondent proper notice of termination as required under the **Act**, the Commission finds that rent is also owed for the month of April 2007. The Commission finds that the Appellant owes the Respondent the sum of \$3000.00 (\$750.00 per month for four months).

The appeal is allowed in part. The outstanding rent owed by the Appellant to the Respondent is hereby reduced from \$4470.00 to \$3000.00. The Appellant shall pay the Respondent the sum of \$3000.00 on or before June 13, 2008.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Aaron Nutbrown against Order No. LD08-151 of the Director of Residential Rental Property, dated March 12, 2008.

Order

WHEREAS Aaron Nutbrown (the Appellant) has appealed against Order LD08-151 of the Director of Residential Rental Property, dated March 12, 2008;

AND WHEREAS the Commission heard the appeal in Charlottetown on April 28, 2008;

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

IT IS ORDERED THAT

1. The outstanding rent owed by the Appellant to the Respondent is hereby reduced from \$4470.00 to \$3000.00. The Appellant shall pay the Respondent the sum of \$3000.00 on or before June 13, 2008.

DATED at Charlottetown, Prince Edward Island, this 20th day of May, 2008.

BY THE COMMISSION:

Maurice Rodgeron, Chair

John Broderick, Commissioner

Ernest Arsenault, 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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