



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR08-017
Order LR08-19**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Rhonda and Steven Andrew
against Order No. LD08-401, of the Director
of Residential Rental Property, dated
October 27, 2008.

BEFORE THE COMMISSION
on Friday, the 12th day of December, 2008.

John Broderick, Commissioner
Gordon McCarville, Commissioner
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, by Rhonda and Steven Andrew against Order No. LD08-401, of the Director of Residential Rental Property, dated October 27, 2008.

Order

Participants

1. For the Appellants:

Rhonda Andrew

2. For the Respondent:

Dan Murray for Atlantic Peoples Housing Ltd., agent for the Respondent

Reasons for Order

1. Introduction

The Appellants Rhonda and Steven Andrew (the Andrews) have appealed Order No. LD08-401 issued by the Office of the Director of Residential Rental Property (the Director) on October 27, 2008. The Island Regulatory and Appeals Commission (the Commission) received Andrews' Notice of Appeal (Exhibit E-17) on October 28, 2008.

On October 14, 2008, the Respondent Gateway Co-operative Ltd. (Gateway) through its agent Atlantic Peoples Housing (Atlantic) filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) with the Director. The Form 2 alleges that the Andrews have not paid outstanding housing charges within 10 days of receiving the September 9, 2008 Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) and seeks as a remedy an order surrendering possession of the residential premises to Gateway and directing the Sheriff to put Gateway in possession. Included with the Form 2 was the September 9, 2008 Form 4, to be effective September 29, 2008, addressed to the Andrews and signed by Dan Murray (Mr. Murray) on behalf of Atlantic.

On October 16, 2008, the Director sent a Notice of Hearing to the parties, advising that a hearing would be held at 1:00 p.m. on October 23, 2008. The Director issued Order LD08-401 thereby surrendering possession of the

residential premises to Gateway, and directing the Sheriff to put Gateway in possession of the residential premises at 12:00 p.m. October 31, 2008.

The present appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, November 10, 2008.

2. Evidence

The evidence of the Andrews may be briefly summarized as follows. As Gateway is a co-operative, there needs to be a meeting of the board, with notice, before a tenant member can be evicted. The Andrews did not receive such notice. While the Andrews acknowledge that there is outstanding rent, the rent is based on family income and it is thus submitted that the total sum should be lower during the time period that Steven Andrew is medically unable to work.

The evidence given on behalf of Gateway may be briefly summarized as follows. The net housing charge (NHC) is based on 25% of family income. The difference between the rent for a unit and the NHC amounts to a subsidy. The subsidy comes from the Canada Mortgage and Housing Corporation (CMHC) and may be calculated in two ways: 1. annually 2. more frequently based on paystubs. The Andrews' June 27, 2008 paystubs were received in August. Gateway normally uses the calculation method most beneficial to the tenant member but will also consider the preference of the tenant member. As the Andrews' family income increased in June, the Andrews were informed by letter dated August 26, 2008 that the subsidy was decreased effective July 1, 2008.

3. Decision

The Commission allows the appeal for the reasons that follow.

In a letter from Gateway to the Andrews dated July 8, 2008, it was noted that housing charges of \$713.01 were owed. The Andrews paid the sum of \$760.00 by way of three payments [July 14, 2008 \$160.00, July 21, 2008 \$300.00 and July 31, 2008 \$300.00] during the month of July 2008.

Because the arrears for July 2008 were fully paid by the end of July and the Andrews were in fact in a credit position of \$46.99, the Commission finds that recalculated housing charge of \$748.00 per month, noted in the August 26, 2008 letter from Gateway to the Andrews, should be retroactive to August 1, 2008 and not July 1, 2008 as specified.

The housing charge for the months of August and September 2008, at \$748.00 per month, minus the credit of \$46.99, totals \$1449.00. On September 5, 2008, the Andrews paid \$400.00 leaving \$1049.00 outstanding.

Mr. Andrews was injured in early October 2008 and unable to work, with an anticipated return to work date of January 1, 2009 [Exhibit E-14]. Accordingly, the Commission finds that the housing charge for the month of October was \$228.00 as a result of Mr. Andrew's loss of income. This results in an outstanding balance of \$1277.00. However, the Andrews had paid the sum of \$700.00 on October 2, 2008, resulting in a net outstanding balance of \$577.00.

The Commission hereby finds that the outstanding balance presented by Gateway to the Director at the October 23, 2008 hearing, in the amount of

\$1617.01, was, with the benefit of additional information presented to the Commission, inaccurate. The Commission finds that the outstanding balance, as of October 31, 2008, is in fact \$577.00.

The Commission notes that Mr. Murray acknowledged at the hearing that the Andrews were otherwise good tenants. The Commission also notes the statement of housing charges [Exhibit E-21] extending back to February 2006. While the Andrews were in arrears on several occasions, they were also in a credit position on several occasions in 2006 and 2007. Such past history provides substantial evidence of good faith on the part of the Andrews.

The appeal is allowed. The Commission hereby sets aside Order LD08-401 and the September 9, 2008 Notice of Termination. The outstanding balance for October 31, 2008 is \$577.00 as previously noted. Calculations for the months of November and December 2008 shall continue to be based on family income and the Andrews shall provide Gateway and Atlantic with timely updates of their financial status.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*:

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **The Commission sets aside the terms of Order LD08-401 and the September 9, 2008 Notice of Termination.**
3. **The outstanding balance of rent owed by the Appellants Rhonda and Steven Andrews to the Respondent Gateway Co-operative Ltd. as of October 31, 2008 is \$577.00.**

DATED at Charlottetown, Prince Edward Island, this 12th day of December, 2008.

BY THE COMMISSION:

(Sgd.) *John Broderick*
John Broderick, Commissioner

(Sgd.) *Gordon McCarville*
Gordon McCarville, Commissioner

(Sgd.) *Anne Petley*
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.

IRAC141y-SFN(2008/10)