



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09003
Order LR09-05**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Linda Ford against Order
No. LD09-053, of the Director of Residential
Rental Property, dated February 16, 2009.

BEFORE THE COMMISSION
on Friday, the 3rd day of April, 2009.

Maurice Rodgerson, Chair
David Holmes, 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 Linda Ford against Order
No. LD09-053, of the Director of Residential
Rental Property, dated February 16, 2009.

Order

Introduction

On March 4, 2009, the Commission received a Notice of Appeal filed by the Appellant Linda Ford (Ms. Ford). Ms. Ford appealed Order No. LD09-053 issued by the Office of the Director of Residential Rental Property (the Director) on February 16, 2009.

In Order LD09-053, the Director ordered that Ms. Ford receive the sum of \$209.00 [cleaning of \$159.00 plus painting touch up of \$50.00], and the Respondents Fred MacPhail, Paul MacDonald [corrected from Director's Order] and Emma Rockett (the tenants) receive the sum of \$1,010.55, from the security deposit funds held in trust by the Commission.

In Ms. Ford's Notice of Appeal, she pointed out that the Director's Order incorrectly identified one of the tenants as Paul MacLeod. Ms. Ford noted that the tenant's name is actually Paul MacDonald.

This appeal proceeded to a hearing before the Commission on March 16, 2009. Ms. Ford represented herself at the hearing. Emma Rockett and Fred MacPhail represented the tenants.

Evidence

Ms. Ford testified that she paid \$250.00 to have the residential premises cleaned after the tenants had moved out. She also paid an undocumented amount for cleaning supplies and to have the waste and compost bins cleaned.

Ms. Ford also noted that the bathroom wall was damaged. The bathtub had to be removed and the drywall, insulation and part of the wood structure had to be replaced. The shower doors broke while being removed. She noticed after the tenants had moved out that part of the caulking around the bathtub was missing.

Ms. Ford told the Commission that all the rooms in the residential premises, except the family room in the basement, had water streaking on the paint. As a result, she had to have the walls repainted, even though they had been painted shortly before the tenants moved in. Ms. Ford stated that she had first tried washing a section of one wall. She noted that it looked good until it dried. When dry, she could still see the outline of the paint streaks. She then made the decision to have her painter repaint the walls.

The tenants stated that they used the bathroom vent fan. They didn't do anything to the walls. Within a month of moving in, they informed Ms. Ford about the "soggy hole" in the wall near the front entry door. Within a week of moving in, they noticed the water marks on the walls. They brought this to Ms. Ford's attention. They have researched the wall streaking on the internet and believe that the problem is surfactant leaching and that it can be cleaned with two or three washes. They noticed black mold spots on the bathroom ceiling and washed it from time to time.

The tenants stated that they washed some of the walls before they moved out. They stopped washing the walls when they noticed some paint visible in the wash water.

Decision

The Commission allows the appeal for the reasons that follow.

Ms. Ford has raised the issue of structural damage to the bathroom at the hearing before the Commission. While the Commission has no doubt that this damage has occurred and that repairs were expensive, the evidence before the Commission, on the civil standard of a balance of probabilities, does not support a finding that the tenants were responsible for this damage. In particular, the Commission notes that the tenants advised Ms. Ford early in the tenancy of the wet drywall in the front entry area, an area underneath the bathroom located on the second storey of the residential premises. Ms. Ford confirmed professionals had been contacted in an effort to locate the source of the problem, but no evidence was presented indicating that source had been found. Given the location of a bathroom in close proximity to the damage it would be logical to check the bathroom as a source but there is no evidence this was done. It was only after the tenants moved out that the serious damage to the bathroom wall was discovered. Ms. Ford testified the damage went beyond the wall and included some structural damage. This suggests the damage to the bathroom may very well have begun before the tenants moved in. The Commission notes that Ms. Ford was made aware of the wet drywall in the front entry and this served as an alert to a problem. The Commission is not prepared to allocate the security deposit towards the cost of the bathroom wall repair. The structural damage to the bathroom may very well have begun long before the tenants moved in.

The evidence before the Commission suggests that, while the tenants did do some cleaning of the residential premises, they did not leave it as clean as when they moved in. Ms. Ford testified that she paid a cleaner \$250.00 to clean the residential premises. Accordingly, the Commission increases the Director's award of \$159.00 for cleaning to \$250.00.

With respect to the condition of the paint on the walls, the Commission rejects the notion that it was necessary to repaint the walls. Ms. Ford testified that a washing of a small area of one wall removed some of the streaking, but left an "outline" of the streaks. Once again, given the evidence before the Commission, it is far from certain that the tenants were responsible for this streaking. There are too many variables and a lack of scientific and objective evidence to satisfy the Commission that the tenants were, on a balance of probabilities, responsible for the streaking of the paint on the walls. However, the tenants are responsible for keeping the walls clean and, by their own testimony; they did not wash all the walls. The Commission therefore replaces the Director's award of \$50.00 for wall paint touch up with the sum of \$250.00 for cleaning the walls and paint touch up.

Accordingly, of the sum of \$1,219.55, representing the security deposit plus accrued interest, Ms. Ford shall receive the sum of \$500.00 and the tenants shall receive the balance of \$719.55.

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

IT IS ORDERED THAT

1. The Appellant Linda Ford shall receive the sum of \$500.00 from the funds held in trust by the Island Regulatory and Appeals Commission.
2. The Respondents Fred MacPhail, Paul MacDonald and Emma Rockett shall receive the sum of \$719.55 from the funds held in trust by the Island Regulatory and Appeals Commission.

DATED at Charlottetown, Prince Edward Island, this 3rd day of April, 2009.

BY THE COMMISSION:

Maurice Rodgerson

Maurice Rodgerson, Chair

David Holmes

David Holmes, Commissioner

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.

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