



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

**Docket LR09-004
Order LR09-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Todd Munn against Order
No. LD09-057, of the Director of Residential
Rental Property, dated February 20, 2009.

BEFORE THE COMMISSION
on Tuesday, the 28th day of April, 2009.

Brian J. McKenna, Vice-Chair
Ernest Arsenault, Commissioner
David Holmes, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

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Introduction

On March 6, 2009, the Commission received a Notice of Appeal filed by the Appellant Todd Munn (Mr. Munn). Mr. Munn appealed Order No. LD09-057 issued by the Office of the Director of Residential Rental Property (the Director) on February 20, 2009.

In Order No. LD09-057, the Director found that Mr. Munn was entitled to retain the undiscounted rent of \$550.00 per month for the months of September, October and November 2008 totaling \$1,650.00. The Director found that Mr. Munn was not entitled to retain the security deposit as he has not served a Notice of Intention to Retain Security Deposit (Form 8) on Ms. Baldin as required by the **Rental of Residential Property Act** R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**). If Mr. Munn had filed a Form 8, he would have been able to claim the advertising costs submitted against the security deposit. The Director ordered that Mr. Munn pay the Respondent Heather Baldin (Ms. Baldin) the sum of \$3,825.00 (representing the sum of \$5,475.00 paid by Ms. Baldin to Mr. Munn for rent 'up front', minus the sum of \$1,650.00 to be retained by Mr. Munn) on or before March 16, 2009.

This appeal proceeded to a hearing before the Commission on March 30, 2009. Both Mr. Munn and Ms. Baldin participated in the hearing by way of a telephone conference call.

Evidence

Mr. Munn told the Commission that the application before the Director was for rent owing, not the security deposit, yet the Director addressed the security deposit. The rent was for a fixed period. Ms. Baldin signed the lease, and the terms of the lease specified that Mr. Munn would retain the security deposit if Ms. Baldin broke the lease. Mr. Munn submits that \$2,750.00 should be returned to Ms. Baldin, not \$3,825.00.

Ms. Baldin told the Commission that Mr. Munn should not be entitled to any of the security deposit as he did not file a Form 8. She noted that the 'lease agreement' specified that she was to give Mr. Munn one month's notice for termination and she followed that requirement. Ms. Baldin noted that the Director informed Mr. Munn at the last hearing that he could file a Form 8 but he has not done so.

Decision

The Commission denies the appeal for the reasons that follow.

Subsections 11(1) and 11(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) *Where premises are let under a fixed term rental agreement,*

(a) a notice of termination shall be served by the lessee not less than sixty days before the expiry of the term; and

(b) service pursuant to clause (a), terminates the rental agreement as of the last day of the term. 1999,c.6,s.2.

The September 1, 2008 'lease agreement' prepared by Mr. Munn and signed by Ms. Baldin reads in part:

If for any reason that I have to move, I completely understand that I will have to give a one month notice in writing.

In signing this agreement, I also understand that if I move before my termination date of the lease agreement that my security deposit will not be returned to me.

The start date of the lease Sept 1st / 2008

The termination date of the lease May 31st / 2009

Section 9 of the **Act** sets out the requirements for the standard form rental agreement:

9. (1) *The Lieutenant Governor in Council may make regulations prescribing the standard form of rental agreement.*

(2) A lessor and lessee who enter into a written rental agreement or renew a written rental agreement and who do not sign the standard form are deemed to have done so and all the provisions of this Act and the standard form apply.

(3) A lessor and lessee who have an oral rental agreement and do not sign a standard form are deemed to have done so and all the provisions of this Act and the standard form apply.

(4) In addition to the statutory conditions, a lessor and lessee may provide in a rental agreement for other benefits and obligations that do not conflict with this Act or the provisions of the standard form.

(5) An additional benefit or obligation is void unless it appears on both the lessor's and lessee's copy of the rental agreement.

(6) Any alteration or deletion from provisions the standard form is required to contain is void.

(7) The standard form prescribed under subsection (1) shall include

(a) the names of the parties;

(b) the address or a description of the location of the residential property;

(c) the term of the agreement;

(d) the rent payable under the agreement;

(e) whether or not a security deposit is required;

(f) the statutory conditions; and

(g) the terms under which the agreement may be terminated.
1988,c.58,s.9.

Emphasis added.

The Commission finds that the rental agreement between Mr. Munn and Ms. Baldin was a fixed term rental agreement consisting of the statutory standard form rental agreement combined with the 'lease agreement' prepared by Mr. Munn and signed by Ms. Baldin. However, the "other benefits and obligations" set out in the 'lease agreement' signed by Ms. Baldin would, *prima facie* [at first sight] apply to the extent that they do not conflict with the **Act** or the standard form.

In the present matter, there is an apparent conflict between the termination notice provisions of the statutory standard form rental agreement and the 'lease agreement' signed by Ms. Baldin. The standard form agreement requires sixty days notice before the expiry of the term. The 'lease agreement' requires one month's notice. The 'lease agreement' also attempts to permit Mr. Munn to retain the security deposit if Ms. Baldin moves before the termination of the 'lease agreement'.

In Order LD09-057 the Director considered the conflicting notice provisions and offered the following reasoning:

The lessor [Mr. Munn] argues that he is entitled to two months' notice pursuant to section 11(2) of the Act. The lease prepared by the lessor and signed by both parties provides for one month's notice in writing, and that is the notice provision on which the lessee [Ms. Baldin] relied in giving one month's written notice of her intention to vacate. The Director finds that the lessor had the option of either incorporating the statutory notice provisions into the written lease agreement or remaining silent on the notice that was required. In either of these scenarios, the statutory provisions would apply. However, having voluntarily abridged the statutory notice periods by providing that the lessee may terminate the agreement on one month's written notice to the lessor, the lessor is bound by the terms of the lease agreement.

At first blush, the Director's reasoning would appear to clash with subsections 9(2), 9(4) and 9(6). *Prima facie*, the notice requirements set out in the statutory standard form rental agreement would prevail.

However, the Commission is mindful that Mr. Munn prepared the 'lease agreement'. The Commission finds that Mr. Munn was aware, or ought to have been aware, of the more stringent requirements for notice set out in the statutory standard form rental agreement. Ms. Baldin relied on the notice requirement contained in the 'lease agreement' and fulfilled this requirement.

Section 9 of the **Interpretation Act** R.S.P.E.I. 1988, Cap. I-8 (the **Interpretation Act**) reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

Black's Law Dictionary, 6th Edition, defines the common law principle of *contra proferentum* [a contract is interpreted against the person who wrote it] as:

Contra proferentem. Used in connection with the construction of written documents to the effect that an ambiguous provision is construed most strongly against the person who selected the language.

In *Combe v. Combe* [1951] 2 K.B. 215, [1951] 1 All E.R. 767 (C.A.), Denning L.J. set out his understanding of the common law principle of *promissory estoppel*:

The principle, as I understand it, is that where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word.

In the present appeal, the 'lease agreement' was crafted by an experienced landlord. The 'lease agreement' set out a less stringent notice requirement than required under the **Act**. The tenant followed this less stringent requirement and relied upon it. The Commission finds that the landlord, at common law, is prevented from relying on the more stringent notice requirement in the **Act**.

The **Act** *prima facie* seeks to impose the more stringent notice requirement contained in the statutory standard form rental agreement. The Commission, however, finds that to interpret the **Act** to override relevant common law principles and doctrines in a situation such as found in the present appeal, would run contrary to the direction set forth in section 9 of the **Interpretation Act**.

Accordingly, the Commission agrees with the findings of the Director that Mr. Munn has voluntarily abridged the statutory notice periods and is therefore bound by the terms of the 'lease agreement'.

With respect to Mr. Munn's request to retain the security deposit, the Commission notes the procedural requirement for doing so set out in subsection 10(5) of the **Act** which reads:

(5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation. 1998,c.100,s.2.

There is no evidence before the Commission that Mr. Munn served Ms. Baldin with a Notice of Intention to Retain Security Deposit (Form 8). Accordingly, subsection 10(4) of the **Act** applies, which reads:

(4) Subject to subsection (5), the security deposit, together with the interest set out in subsection (3) shall be returned to the lessee within ten days of the date on which the lessee delivers up possession of the residential premises.

The Commission hereby confirms Order LD09-057 and orders Mr. Munn to pay the sum of \$3,825.00 (which includes the security deposit) on or before May 29, 2009. In addition, pursuant to the provisions of subsection 10(3)(d) of the **Act**, Mr. Munn shall pay Ms. Baldin interest on the \$550.00 security deposit on or before May 29, 2009.

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 denied.
2. The Appellant Todd Munn shall pay the sum of \$3,825.00 to the Respondent Heather Baldin on or before May 29, 2009. The Appellant shall also pay interest, pursuant to subsection 10(3)(d) of the *Rental of Residential Property Act*, to the Respondent on the \$550.00 security deposit portion of said sum, said interest payable on or before May 29, 2009.

DATED at Charlottetown, Prince Edward Island, this 28th day of April, 2009.

BY THE COMMISSION:

(Sgd.) Brian J. McKenna

Brian J. McKenna, Vice-Chair

(Sgd.) Ernest Arsenault

Ernest Arsenault, Commissioner

(Sgd.) David Holmes

David Holmes, 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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