



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09010
Order LR09-09**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Glen Strickey against Order
No. LD09-101, of the Director of Residential
Rental Property, dated April 1, 2009.

BEFORE THE COMMISSION
on Friday, the 5th day of June, 2009.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

IN THE MATTER of an appeal, under
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Property Act, by Glen Strickey against Order
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Introduction

On April 16, 2009, the Commission received a Notice of Appeal filed by the Appellant Glen Strickey (Mr. Strickey). Mr. Strickey appealed Order No. LD09-101 issued by the Office of the Director of Residential Rental Property (the Director) on April 1, 2009.

In Order LD09-101, the Director ordered that the application of the Respondent Fonda Pettipas (Ms. Pettipas) seeking termination of the rental agreement effective November 1, 2008 be approved. The Director ordered that Mr. Strickey return November 2008 rent in the amount of \$750.00 to Ms. Pettipas.

This appeal proceeded to a hearing before the Commission on May 4, 2009. Mr. Strickey represented himself. Ms. Pettipas represented herself and her mother Debbie Pettipas also testified.

Evidence

Mr. Strickey told the Commission that the apartment was clean. While he was aware that Ms. Pettipas had animal allergies, he was not aware at the time that she was allergic to cats. She had told him that she was allergic to pets and that she had two hypoallergenic dogs. He noted that the previous tenants' cat was present when she viewed the apartment. In fact, she was sitting within a few feet of the cat when she signed the lease. He therefore believed that she was allergic to dogs. He noted the previous tenants did not leave until November 1 and they were late cleaning the apartment. When Ms. Pettipas entered the apartment she had an allergic reaction. He suggested she return in a few hours and during that time he had professional cleaners clean the apartment. When she returned, she admitted that the apartment was clean but she was unable to stay because of her allergy. He offered to have Servicemaster ionize the apartment but she did not want to rent the apartment. The apartment remained vacant until February 2009. Mr. Strickey submits that it was Ms. Pettipas' responsibility to not sign the lease as she had full knowledge that a cat had been in the apartment and he was unaware at the time of the nature and severity of her allergies.

Ms. Pettipas acknowledged that there was a cat present when she signed the lease. She noted that she had lived in two previous places where there were cats and she didn't have problems. She noted that the previous tenants were late leaving the apartment because their mover failed to appear. When she arrived, the apartment smelled of cat. When she returned a few hours later,

the apartment smelled of vinegar. She still had a reaction. She could see cat hair between the floor boards and on the curtains.

Debbie Pettipas noted that when they first arrived at the apartment on November 1, 2008 there was a strong smell of cat / ammonia. She does not have allergies herself, but the smell was strong enough to make her cough. She noticed the cat hair between the floorboards. She believes that the apartment's forced air furnace was stirring up the cat dander.

Decision

The Commission allows the appeal in part for the reasons that follow.

The Commission finds that Mr. Strickey, Ms. Pettipas and Debbie Pettipas are all credible witnesses. Indeed, the Commission is of the view that both parties acted reasonably under the circumstances.

The Commission finds that Mr. Strickey was aware that Ms. Pettipas had an animal allergy. However, the Commission finds that he was not aware of the severity of Ms. Pettipas' allergy and that she was allergic to cats until November 1, 2008 when she arrived at the apartment, prepared to move in.

The Commission finds that Ms. Pettipas was aware that she had an allergy to cats. However, the Commission finds that she honestly believed that her allergy to cats was manageable, given her past experiences of having lived in a household with cats.

Whether as a result of last minute cleaning efforts by the previous tenants, the advent of cooler weather and the need to run the apartment's forced air heating system or perhaps some other reason, Ms. Pettipas had an allergic reaction through no fault of her own or of Mr. Strickey. Indeed, Mr. Strickey arranged for a prompt professional cleaning of the apartment later that day. When that did not appear to resolve the problem he offered to have the apartment ionized.

Under these rather unusual circumstances, the Commission agrees with the Director that the rental agreement had to be terminated as of November 1, 2008. However, the issue remains as to whether Mr. Strickey violated Section 6, condition 1 of the **Rental of Residential Property Act** (the **Act**) which reads as follows:

6. Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:

1. Condition of Premises

The lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.

The Commission finds that Mr. Strickey did not violate Section 6, condition 1. There is no evidence that the apartment was not in a good state of repair and fit for habitation. There is no evidence that the apartment did not comply with standards respecting health, safety or housing.

Accordingly, the Commission finds that the rental agreement between Mr. Strickey and Ms. Pettipas was terminated as of November 1, 2008.

As the termination of the rental agreement was necessary, but not the fault of either party, the Commission hereby orders Mr. Strickey to return the sum of \$375.00 to Ms. Pettipas. This sum of \$375.00 represents one-half of the \$750.00 rent paid by Ms. Pettipas for the month of November 2008. The Commission finds that Mr. Strickey is entitled to retain the balance of the rent paid by Ms. Pettipas for the month of November 2008.

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 hereby allowed in part.
2. The rental agreement between the Appellant Glen Strickey and the Respondent Fonda Pettipas is hereby terminated as of November 1, 2008 without fault of either party.
3. The Appellant shall return the sum of \$375.00 to the Respondent representing one-half of the November 2008 rent paid by the Respondent. Payment shall be made on or before June 30, 2009.
4. The Appellant shall retain the balance of the November 2008 rent paid by the Respondent.

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 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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