



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09011  
Order LR09-10**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Beverly Dickerson against  
Order No. LD09-093, of the Director of  
Residential Rental Property, dated March 26,  
2009.

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

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

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# Order

Compared and Certified a True Copy

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(Sgd.) Susan Jefferson  
Commission Administrator

**IN THE MATTER** of an appeal, under  
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## Introduction

On April 17, 2009, the Commission received a Notice of Appeal filed by the Appellant Beverly Dickerson (Ms. Dickerson). Ms. Dickerson appealed Order No. LD09-093 issued by the Office of the Director of Residential Rental Property (the Director) on March 26, 2009.

On November 10, 2008, Ms. Dickerson had made an application to the Director pursuant to section 8(d.1) of the *Rental of Residential Property Act* (the **Act**), submitting that the condition of the rental agreement relevant to the payment of rent had not been complied with. In Order No. LD09-093, the Director ordered that Ms. Dickerson's application be denied.

Ms. Dickerson's rental agreement commenced effective August 1, 2005. The rent at that time was \$750.00 payable on the first day of each month. She paid a \$375.00 security deposit. Ms. Dickerson submits that the rent for her apartment had been \$700.00 per month for the previous tenant and thus she contends that the rent for her apartment had been invalidly increased by \$50.00 per month just prior to entering into the rental agreement.

This appeal proceeded to a hearing before the Commission on May 4, 2009. Ms. Dickerson represented herself. Wayne Beaton represented the Respondent Killam Properties Inc. (Killam).

## Evidence

At the hearing before the Commission, Ms. Dickerson referred to Exhibit E-13(a) which is an April 8, 2009 letter from Earl Redmond, the former owner of the apartment building. She submitted that Mr. Redmond's letter establishes that the former tenant of her apartment paid rent of \$700.00 per month. She submitted that the rent for this apartment was less than some of the other apartments because it faced the parking lot.

At the hearing, Killam introduced Exhibits E-15, a rent roll, and E-16, an agreement of purchase and sale between Mr. Redmond and Killam respecting the sale of the apartment building to Killam. Killam submits that the rent roll, apparently faxed from Earl Redmond Inc. on April 28, 2005, reveals that Ms. Dickerson's apartment was vacant at that time, with a rent of \$750.00 per month. Killam also submits that the agreement of purchase and sale, signed February 16, 2005, requires the premises to comply with all residential tenancy and residential rent review legislation, requires the vendor to provide the purchaser with a rent roll and requires a statutory declaration from an officer of the vendor that the vendor's representations, covenants and warranties are true and correct on the closing date. The closing date noted on the agreement of purchase and sale is April 30, 2005.

## **Decision**

The Commission denies the appeal for the reasons that follow.

Ms. Dickerson's appeal is based on new evidence not originally before the Director, namely the April 8, 2009 letter of Earl Redmond. This letter states that when the apartment building was sold to Killam in May 2005, the former tenant was paying \$700.00 per month for the apartment.

However, Killam has provided a copy of the agreement of purchase and sale and the rent roll. The rent roll notes that the apartment now occupied by Ms. Dickerson was vacant at the time and the rent for that apartment was \$750.00. The agreement of purchase and sale obligated Mr. Redmond to provide an accurate rent roll.

Mr. Redmond's April 8, 2009 letter thus contradicts the information contained in the documents provided by Killam. Unfortunately, Mr. Redmond was not present to speak to his letter and address this contradiction.

The Commission finds that greater evidentiary weight must be given to the documents from Killam than to Mr. Redmond's April 8, 2009 letter. The agreement of purchase and sale and the rent roll were prepared at the relevant time as part of the sale process of the apartment building, while Mr. Redmond's signed but unsworn letter was prepared nearly four years later. Mr. Redmond's precise recollection of these details may very well have faded during that time period.

Accordingly, the Commission denies Ms. Dickerson's appeal and the Director's Order LD09-093 is hereby confirmed.

**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. **Order LD09-093 is hereby confirmed.**

**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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