



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

**Docket LR09-009
Order LR09-11**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Ed Keunecke against Order
LD09-112, of the Director of Residential
Rental Property, dated April 6, 2009.

BEFORE THE COMMISSION
on Monday, the 10th day of August, 2009.

John Broderick, Commissioner
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
Section 25 of the Rental of Residential
Property Act, by Ed Keunecke against Order
LD09-112, of the Director of Residential
Rental Property, dated April 6, 2009.

Order

Introduction

On April 6, 2009, the Commission received a Notice of Appeal filed by the Appellant Ed Keunecke (Mr. Keunecke). Mr. Keunecke appealed Order No. LD09-112 issued by the Office of the Director of Residential Rental Property (the Director) on April 6, 2009.

In Order LD09-112, the Director found that an amount of \$1,241.00 was owed by the lessor Meike Keunecke to the lessee Josephine Edge (Ms. Edge) for an unlawful increase in rent for the 17 month period of November 2007 to April 2009. Should the lessor accept the 5% increase to which she is entitled effective January 1, 2009, the lessor may deduct the sum of \$156.00 representing the allowable \$39.00 per month increase for the months of January through April 2009 inclusive from the amount of \$1,241.00 otherwise payable. Should the lessor accept the 5% increase to which she is entitled effective January 1, 2009, the monthly rental for the premises will increase to \$819.00 per month effective January 1, 2009. Should the lessor not accept the 5% increase to which she is entitled effective January 1, 2009, the monthly rental for the premises will remain at \$780.00 per month until it is increased either in accordance with Section 23 of the *Rental of Residential Property Act* (the *Act*) or by order of the Director.

The Commission held a brief hearing on May 4, 2009 in order to adjourn the hearing without date as the Appellant was not able to be present. Upon his return to the Province of Prince Edward Island, Mr. Keunecke contacted the Commission to schedule a hearing date and a hearing of this appeal was held on June 16, 2009.

Evidence

At the outset of the hearing, Mr. Keunecke told the Commission that he is the landlord, not Meike Keunecke. Mr. Keunecke stated that the monthly rent for the premises had been \$980.00. However, the tenants who occupied the premises in 2004-2005 left the premises in poor condition. Accordingly, Mr. Keunecke decided to rent the premises on an "as is" basis and he advertised it for \$780.00 per month. He intended to remodel the premises at a later date and Ms. Edge rented the premises with the understanding that the rent would be brought up to \$980.00 within two years. On August 18, 2007, the parties signed a rental agreement specifying a monthly rental of \$853.00, commencing November 1, 2007. After one year, Ms. Edge decided to "disagree with the contract" and she filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement on September 2, 2008. In the Form 2,

Ms. Edge alleged that she was overcharged for rent. Mr. Keunecke submits that the monthly rental ought to be \$853.00 as Ms. Edge agreed to this amount in the rental agreement.

Ms. Edge told the Commission that Mr. Keunecke did not apply to increase the rent and therefore the rental increase from \$780.00 to \$853.00 per month was illegal. She noted that the newspaper advertisement he had placed specified the rent as \$780.00 per month. She was never told that the rent would increase to \$980.00 in two years. She stated that she did work on the premises to improve it: gardening, installation of shutters on the front of the premises, decorating the bathroom, cleaning of mildew in the bathroom, repair of walls, screens for windows etc. She made these improvements with the understanding that the rent would remain at \$780.00 per month.

Decision

The Commission denies the appeal for the reasons that follow.

While the evidence before the Commission is clear that the rent for the premises had been \$980.00 per month in 2006, the Commission finds that Mr. Keunecke made the decision to advertise the premises at the rate of \$780.00 per month in order to attract a new tenant. Ms. Edge agreed to rent the premises at that monthly rate. At that point, the established rental rate for the premises was set at \$780.00. For the purposes of the present appeal, the Commission accepts the evidence of Mr. Keunecke that the reduction in rent was necessary because previous tenants left the premises in poor condition.

Part IV of the **Act** sets out the process to be followed in order to seek a rental increase. Notice of the rental increase must be given to the tenant. Subsections 23(1) and 23(3) are particularly germane to the present appeal and read as follows:

23. (1) Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.

...

(3) Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee.

The Commission notes that the provisions of Part IV of the **Act** provide landlords with an opportunity to lawfully seek a rental increase.

While Ms. Edge did sign the August 18, 2007 rental agreement, the increase in rent was contrary to the **Act** as Mr. Keunecke did not follow the required process to seek a rental increase. Accordingly, the Commission agrees with the findings contained in the Director's Order LD09-112 and the appeal is hereby denied.

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 LD09-112 is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, this **10th** day of **August**, 2009.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ernest Arsenault

Ernest Arsenault, Commissioner

(Sgd.) David Homes

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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