



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09-018
Order LR09-13**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Dale MacDonald against
Order LD09-210, of the Director of
Residential Rental Property, dated July 24,
2009.

BEFORE THE COMMISSION
on Friday, the 14th day of August, 2009.

John Broderick, Commissioner
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 Dale MacDonald against
Order LD09-210, of the Director of
Residential Rental Property, dated July 24,
2009.

Order

Introduction

On July 29, 2009, the Commission received a Notice of Appeal filed by the Appellant Dale MacDonald (Mr. MacDonald). Mr. MacDonald appealed Order No. LD09-210 issued by the Office of the Director of Residential Rental Property (the Director) on July 24, 2009.

By way of background, in Order LR09-210, the Director found that Mr. MacDonald failed to invalidate the Notice of Termination filed by the Respondent Wallace Thomson (Mr. Thomson) when he did not pay the total outstanding rent within ten days of receiving the Notice of Termination. The Director also found that Mr. MacDonald had not availed himself of the provisions of section 16 of the **Rental of Residential Property Act** (the **Act**) to make an application to the Director to set aside the Notice of Termination within the required time set out in the **Act**. The Director also found that Mr. MacDonald violated the conditions of the Notice of Termination, namely section 6.10 of the **Act**. The Director then found Mr. Thomson's application to be valid and stated:

The lessee [Mr. MacDonald] and all other occupants in the unit, namely Lester MacKinnon, must vacate the unit on or before 12:00 midnight, July 29, 2009. If the lessee and all other occupants do not vacate the unit on or before 12:00 midnight, July 29, 2009 then possession of the residential premises be surrendered to the lessor [Mr. Thomson] and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 p.m., July 31, 2009.

The Director then ordered the following:

Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 p.m., July 31, 2009.

The appeal proceeded to a hearing on August 10, 2009. Mr. MacDonald was not present but participated in the hearing by telephone. Mr. Thomson was present and was accompanied by his representative Ken Hacking.

Evidence

Mr. MacDonald testified that he had been paying Mr. Thomson the \$500.00 rent money every month. He noted that he only received one receipt, which was noted on the back of a light bill written with a carpenter pencil. Mr. MacDonald noted that he has been subletting the premises to Lester MacKinnon. He stated that Mr. Thomson is “all paid up” and that Mr. Thomson is “always looking for money”. Mr. MacDonald stated that he received receipt #8, contained in Exhibit E-5. He states that he had met Mr. Thomson after the hearing and received the receipt.

Mr. Thomson stated that he has not spoken to Mr. MacDonald since the July 16, 2009 hearing before the Director. He stated that he has “never received one penny from Dale MacDonald”. He noted that he and Mr. MacDonald had orally agreed on a price of \$19,500.00 for the sale of the premises, a renovated mobile home. He was to pay the purchase price upon receipt of funds from Workers’ Compensation. He was to move in, pay the lot rent, and pay the electric bill. After five or six months there was no rent from him. He paid the lot rent for the first few months, and then stopped paying that. The premises were heated with electric heat and the electric bill was unpaid. Mr. Thomson told Mr. MacDonald to move. Mr. MacKinnon then moved in and started paying rent to Mr. MacDonald. Mr. Thomson then informed Mr. MacKinnon that Mr. MacDonald did not own the premises and that he would have to move. Mr. MacKinnon did not move out of the premises.

Mr. Thomson noted that the draft Agreement of Purchase and Sale (the Agreement) was prepared by Mr. MacDonald’s lawyer. Mr. Hacking pointed out that the Agreement was only signed by Mr. MacDonald and had a couple very unusual clauses including requirements for Mr. Thomson to be responsible for snow clearing and grass cutting. Mr. Thompson noted that the first time he saw this Agreement was at the July 16, 2009 hearing.

Decision

The Commission denies the appeal for the reasons that follow.

The Commission notes that Mr. MacDonald did not pay the total outstanding rent noted on the Notice of Termination within the required ten day period. The Commission also notes that Mr. MacDonald did not apply to the Director to set aside the Notice of Termination within the statutory time period.

The Commission notes that the alleged receipt “on the back of a light bill written with a carpenter pencil” was not produced in evidence. Mr. Hacking submitted at the hearing that the signature on receipt #8, contained in Exhibit E-5, is not that of Mr. Thompson. While the Commission does not have the expertise to determine if the signature on receipt #8 is a forgery, Mr. Thomson advised the Commission that he recently showed the copy of receipt #8 contained in the Commission’s Proposed Exhibit List to the Montague RCMP. The remaining receipts contained in Exhibit E-5 verify that Mr. MacDonald received payment from Mr. MacKinnon and that Mr. MacDonald paid the \$100.00 per month park rent for the months of November and December 2008 and January and February 2009. The Commission finds that there is no reliable evidence that Mr. MacDonald paid the park rent from March 2009 forward and no reliable evidence that Mr. MacDonald paid rent for the premises to Mr. Thompson.

Accordingly, the Commission denies the appeal and upholds Order LD09-210.

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 LD09-210 is hereby upheld in its entirety.
3. The Sheriff is hereby directed forthwith to put the Respondent Wallace Thomson in possession of the residential premises located at 48 Courtney Crescent in Lower Montague, Kings County, Prince Edward Island.

DATED at Charlottetown, Prince Edward Island, this **14th** day of **August**, **2009**.

BY THE COMMISSION:

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *David Holmes*

David Holmes, Commissioner

(Sgd.) *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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