



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09-016
Order LR09-14**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Killam Properties Inc.
against Order No. LD09-180, of the Director
of Residential Rental Property, dated June
19, 2009.

BEFORE THE COMMISSION

on Wednesday, the 26th day of August, 2009.

John Broderick, Commissioner
Gordon McCarville, Commissioner
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

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Introduction

On June 25, 2009, the Commission received a Notice of Appeal filed by the Appellant Killam Properties Inc. (Killam). Killam appealed Order No. LD09-180 issued by the Office of the Director of Residential Rental Property (the Director) on June 19, 2009.

By way of background, on November 20, 2008 the Director received a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Application for Enforcement) from the Respondent David Turner (Mr. Turner). In the Application for Enforcement filed pursuant to section 8 of the **Rental of Residential Property Act** (the **Act**), Mr. Turner sought a reimbursement for a portion of the rent paid.

In Order LD09-180, the Director stated the following:

*There is no doubt that it was the intention of the lessor [Killam] that the lessee [Mr. Turner] should pay for the hot water supplied to his unit. There is no issue that it was a mistake on the part of the lessor's employee that led to hot water being checked off on the lease. Mr. Turner did not prepare the lease nor negotiate any of the terms of the lease with Ms. Silliker. [sic, should read Ms. Silliphant] The evidence of both parties was that he simply read and signed the document she prepared. The question is whether the lessor is bound by the mistake. The **Act** is silent on these issues; recourse must be had to the common law.*

The Director found that Mr. Turner was entitled to a return of rent from Killam in the amount of \$546.25.

This appeal proceeded to a hearing before the Commission on July 7, 2009. Mr. Turner represented himself. Wayne Beaton represented Killam.

Evidence

Mr. Turner raised as a preliminary matter the fact that Killam's representative arrived late for the hearing. Mr. Turner submitted that the appeal should be quashed because Killam did not appear at the time scheduled for the hearing. Mr. Beaton apologized for his "tardiness". The Commission considered the matter and decided that the hearing would proceed as Mr. Beaton arrived promptly after having been reminded of the hearing by Commission staff.

Mr. Beaton submitted that Mr. Turner is an intelligent man who was aware that he was required to pay for the electricity for the hot water serving his unit. Mr. Beaton noted that the hot water tank was visible in the unit. He noted that Mr. Turner had no complaints about his electricity bill until he and Killam's manager had problems with each other. Mr. Beaton submitted that it was only then that Mr. Turner reviewed his lease and noticed that "Hot Water" was checked off as a facility provided by Killam. Mr. Beaton submitted that Mr. Turner pursued the return of rent issue after he was evicted. Mr. Beaton stated that the Director, Ms. Flanagan, had told him that she was a family friend of Mr. Turner. Mr. Beaton noted that the Application for Enforcement filed by Mr. Turner sought return of \$287.50 and yet the Director ordered the return of \$546.25. Mr. Beaton submitted that another rental officer should have heard the matter.

Under questioning from Commissioner McCarville, Mr. Beaton acknowledged that there were likely other errors on the Form 1 Standard Form of Rental Agreement. For example "water" was not checked off, while washer and dryer (without charge) and janitorial service for common areas perhaps should have been checked off.

Under questioning from Commissioner Petley, Mr. Beaton acknowledged that Killam did not have a detailed central database for its units.

Mr. Turner testified that he was aware that there is an electric water heater in the unit. However, he does not recall being informed that he would have to pay for the electricity for that water heater. He stated that he thought that there might be a common electrical meter for the hot water tank. He noted that he signed the rental agreement at Killam's regional office in Stratford. After living in the unit for six or seven months, he noticed that his average power bill was about \$95.00 to \$100.00 per month. He could not understand why it was so high. He attempted to discuss various issues with Mr. Beaton in August or September 2008. However, Mr. Beaton didn't want to discuss things.

Decision

The Commission denies the appeal for the reasons that follow.

Killam submitted that the Director may have been biased as Mr. Turner is a friend of the Director's family. It appears that the Director fully disclosed this fact to Killam. While there may be a reasonable apprehension of bias, the Commission finds that the Director appropriately disclosed the connection to Mr. Turner. Most importantly, however, the appeal before the Commission is a hearing *de novo*.

A review of the evidence before the Commission makes it quite clear that, while the rental agreement is the standard form document set out as Form 1 in the **Act's** Regulations, it was Killam, not Mr. Turner, who selected which provisions apply. The evidence indicates that Killam made an error as the employee was not familiar with the particular unit. Killam's representative acknowledged that Killam does not have a detailed database for each unit. Such a database could have provided the tools to the employee to either quickly familiarize herself with the unit and avoid the error, or have assisted her in detecting the error at a very early stage of the tenancy.

The Commission finds that the rental agreement speaks for itself. The Commission finds that the principles of law enunciated in the cases cited by the Director are sound.

In a nutshell, the rental agreement provided that the rent paid to Killam would include the service or facility of hot water. However, this service was actually paid by Mr. Turner as the electricity for the hot water heater was included in Mr. Turner's electric bill. Mr. Turner did not waive his right to this service by paying his electric bill.

Killam argues that in any event Mr. Turner's claim should be limited to the \$287.50 he set out in his Application for Enforcement. The Commission finds that parties are able to provide further evidence to advance, and if necessary, revise their claim. In the present matter, Mr. Turner hired a professional engineer to calculate his revised claim. That claim was reduced somewhat by the Director.

Accordingly, the Commission finds that Mr. Turner overpaid Killam during the term of the tenancy and therefore, he is entitled to a return of rent in the amount of \$546.25.

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. Killam Properties Inc. shall return rent to David Turner in the amount of \$546.25, payable on or before September 21, 2009.

DATED at Charlottetown, Prince Edward Island, this 26th day of August, 2009.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Gordon McCarville

Gordon McCarville, 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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