



**Docket LR09-023
Order LR09-18**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Michael Gallie against Order
No. LD09-269, of the Director of Residential
Rental Property, dated September 1, 2009.

BEFORE THE COMMISSION
on Friday, the 25th day of September, 2009.

John Broderick, Commissioner
Gordon McCarville, 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 Michael Gallie against Order
No. LD09-269, of the Director of Residential
Rental Property, dated September 1, 2009.**

Order

Introduction

On September 4, 2009, the Commission received a Notice of Appeal filed by the Appellant Michael Gallie (Mr. Gallie). Mr. Gallie appealed Order No. LD09-269 issued by the Office of the Director of Residential Rental Property (the Director) on September 1, 2009.

By way of background, on August 27, 2009, the Respondents Ken and Evelyn Jenkins (the Jenkins) made an application to the Director under section 8.(d.3) of the **Rental of Residential Property Act** (the **Act**), for enforcement of statutory condition 6.10 requesting an order that possession of the residential premises be surrendered to the Jenkins and directing the sheriff to put the Jenkins in possession.

The Director heard the matter on August 31, 2009 and granted the Jenkins' application, ordering the premises to be surrendered to the Jenkins and directing the sheriff to put them in possession of the premises at 12:01 p.m., Tuesday, September 8, 2009.

The Commission heard Mr. Gallie's appeal on September 17, 2009. Mr. Gallie and his father John Gallie were present. Evelyn Jenkins (Mrs. Jenkins) and Carol Jenkins were also present.

Evidence

Mr. Gallie testified that he understood that he could remain in the premises by paying the outstanding August rent of \$450.00 on or before the 27th day of August, 2009. He noted the handwritten note added by Mrs. Jenkins on the "Particulars of Termination" section of the August 7, 2009 Form 4, which reads:

We can't be going in every day. When this \$450 is paid this will be cancelled.

Mr. Gallie and John Gallie told the Commission that they offered to pay the outstanding rent on August 26, 2009, but Ken Jenkins (Mr. Jenkins) told them that someone else would be renting the premises. Mr. Gallie noted that at the August 31, 2009 hearing, he offered that Social Services would pay both the outstanding August rent and the upcoming September rent.

Mrs. Jenkins contended that the Jenkins never received an assurance from Social Services that both the August and September rent would be paid. She

noted that the premises are currently rented to another person and that person is staying in a motel, pending the resolution of this matter.

Decision

The Commission denies the appeal for the reasons that follow.

The Commission agrees with the Director that Mr. Gallie failed to invalidate the August 7, 2009 Form 4 Notice of Termination when he failed to pay the outstanding rent within ten days of receiving the Notice of Termination. The Commission notes that this requirement, contained in section 13 of the **Act**, is clearly printed in bold type on the Form 4.

Accordingly, the appeal is denied. Possession of the residential premises located at 71 Kensington Road, Apartment #2, Charlottetown, Prince Edward Island shall be surrendered to the Jenkins and the sheriff is directed to put the Jenkins in possession of the residential premises at 12:01 p.m. Thursday, October 1, 2009. In all other respects the provisions of Order LD09-269 are 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. **Possession of the residential premises located at 71 Kensington Road, Apartment #2, Charlottetown, Prince Edward Island shall be surrendered to Ken and Evelyn Jenkins and the sheriff is directed to put Ken and Evelyn Jenkins in possession of the residential premises at 12:01 p.m. Thursday, October 1, 2009.**
3. **In all other respects, the provisions of Order LD09-269 are hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this **25th** day of **September, 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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