



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket: LR09024
Order LR09-22**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by David & Sandra Watson and
Michael & Suzette Algozzino against Order
No. LD09-254 and Order No. LD09-255, of the
Director of Residential Rental Property,
dated August 25, 2009.

BEFORE THE COMMISSION
On Friday, the 23rd day of October, 2009

John Broderick, Commissioner
Allan Rankin, Vice-Chair
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 David & Sandra Watson and Michael & Suzette Algozzino against Order No. LD09-254 and Order No. LD09-255, of the Director of Residential Rental Property, dated August 25, 2009.

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Introduction

On September 8, 2009, the Commission received a Notice of Appeal filed by Rick Beck (Mr. Beck), official representative of David and Sandra Watson and Michael and Suzette Algozzino (the Appellants). The Appellants appealed Order No. LD09-254 and Order No. LD09-255 issued by the Office of the Director of Residential Rental Property (the Director) on August 25, 2009.

By way of background, the Appellants filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated August 3, 2009 (the Notice of Termination). On August 4, 2009, the Director received a Form 6 Application by Lessee to Set Aside Notice of Termination (Application to Set Aside) filed by Kevin and Lynn Leonard (the Leonards). In Order LD09-254, the Director found that the Notice of Termination was invalid and that rental agreement between the Appellants and the Leonards was to remain in effect. In Order LR09-255, the Director found the Application to Set Aside was valid and the rental agreement between the Appellants and the Leonards remains in effect.

This appeal proceeded to a hearing before the Commission on October 5, 2009. Mr. Beck represented the Appellants and testified at the hearing. The Leonards were present and testified at the hearing.

Evidence

Mr. Beck told the Commission that any time the Leonards had a complaint; a licensed professional was promptly sent to assist. The hot water tank was examined and found to be working properly. A 1500 watt heater was installed in the pump room to prevent the water pump from freezing. A 500 watt heater was installed in the bathroom. The electrical service panel was replaced. The wiring to the water heater was replaced. Following the direction of Order LD09-254, the top element of the water heater was replaced. In addition, the bottom element was also replaced. The thermostats were checked and found to be good. The top element was tested and found to be working. There was some sediment in the bottom of the tank.

Mr. Beck submits that the Leonards have a high electricity bill simply because they are using the energy. He noted that the Leonards contacted the Department of Health. They also have filed papers with Small Claims Court against the Appellants.

The Leonards told the Commission that they rented the residential premises from its former owner, Chris Collins. The residential premises were in poor condition, and the Leonards did a lot of work to fix it up. The Leonards submit that if they were habitually late in paying rent, why did the Appellants wait until August 2009 to take action. The Leonards submit that Maritime Electric investigated the electricity consumption issue and were of the opinion that the source of the problem was a defective electric hot water heater. Maritime Electric and Mark Lanigan of the Commission were at the premises for two hours. They checked the panel, tested all the major appliances and concluded that the source of the problem was the electric hot water heater. The Leonards noted that when the water heater elements were replaced, they were heavily corroded and difficult to pull out of the tank. They note that initially the wrong bottom replacement element was installed: a 4500 watt element rather than the required 3000 watt element. The water heater had 14 gauge wiring when it should have had 12 gauge wiring. The Leonards stated that the monitoring by Maritime Electric revealed a “big draw” at 2:00 a.m. The Leonards submit that they are not in arrears of rent. They submitted that the late rent payments were due to the financial burden of their excessively high electricity bill.

Decision

The Commission denies the Appeal for the reasons that follow.

In Order LD09-254, the Director found that the Leonards were habitually late in paying the rent. However, the Director noted that the Appellants were responsible for ensuring that the hot water heater worked properly. In Order LD09-232 repairs to the hot water heater were ordered. The Director concluded in Order LD09-254 that the Appellants had not established just cause for the termination of the rental agreement. In Order LD09-255, the Director also determined that the rental agreement should remain in effect.

The evidence shows that the Leonards faced an unusually high electricity bill. Maritime Electric investigated the electrical consumption at the residential premises and in their June 22, 2009 letter noted:

“... it appears that the electric hot water heater is possibly a major contributing factor to usage levels within the home.”

The Commission notes that the Appellants did undertake repairs to the hot water heater and indeed went beyond the specified repairs set out in Order LD09-232.

The Commission finds that there is no evidence that the Director made an error in Order LD09-254 or Order LD09-255. According, the appeal is 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 hereby denied.**
2. **Orders LD09-254 and LD09-255 are hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this 23rd day of October, 2009.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Allan Rankin

Allan Rankin, Vice-Chair

(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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