



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09027
Order LR09-23**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Vance Ford and Kory Rice
against Order No. LD09-306, of the Director
of Residential Rental Property, dated
October 5, 2009.

BEFORE THE COMMISSION
on Thursday, the 29th 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 Vance Ford and Kory Rice
against Order No. LD09-306, of the Director
of Residential Rental Property, dated
October 5, 2009.

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Introduction

On October 9, 2009, the Commission received a Notice of Appeal filed by Vance Ford (Mr. Ford). Mr. Ford appealed Order No. LD09-306 issued by the Office of the Director of Residential Rental Property (the Director) on October 5, 2009.

By way of background, CIBC Mortgages Inc. (CIBC) filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated August 15, 2009. On September 13, 2009, the Director received a Form 3 – Notice of Termination by Lessee of Rental Agreement filed by the Appellant.

In Order LD09-306 the Director stated:

“The lessees did not move to set aside the Notice of Termination within the ten days specified on the Notice. The lessee Vance Ford signed a Notice of Termination by Lessee agreeing to vacate on September 24, 2009 but has failed to do so. The lessees continue to occupy the residential premises as of the date of the hearing.”

This appeal proceeded to a hearing before the Commission on October 19, 2009. Mr. Ford was present at the hearing. Nichola Hewitt and David Manuel represented CIBC at the hearing.

Evidence

Mr. Ford submitted that he did not received a letter dated August 12, 2009 from Paul Michael, Q.C., a lawyer at Campbell Lea representing CIBC, until the afternoon of Saturday, August 15, 2009. This letter, addressed to Mr. Ford's roommate Kory Rice, requested a copy of the apartment key within 48 hours of receipt of the letter; otherwise eviction proceedings would be commenced. The locksmith arrived at the door of the premises on the morning of Monday August 17, 2009. Mr. Ford called Ms. Hewitt, a lawyer at Campbell Lea, shortly after the locksmith arrived. Mr. Ford submitted that CIBC did not give him 48 hours, from the date and time of receipt of the August 12, 2009 letter, to provide a copy of the key. Mr. Ford told the Commission that the lock, for which CIBC had no key, was an old lock, thus proving that neither Mr. Rice, nor himself, changed the lock. Mr. Ford stated that the rent is paid up for all of October 2009.

CIBC submitted that the original letter was served on Mr. Rice on August 13, 2009. A copy of this letter was then attached to the Notice of Termination, which was served on August 15, 2009. CIBC noted that neither Mr. Ford nor Mr. Rice filed an Application to Set Aside Notice of Termination. CIBC submitted that Mr. Rice stated on his Notice of Appeal that he intended to move out of the apartment by October 14, 2009.

Decision

The Commission denies the appeal for the reasons that follow.

The Commission finds that there is no evidence on the record of any error made by the Director in Order LD09-306. Neither Mr. Ford nor Mr. Rice filed a Form 6 Application by Lessee to Set Aside Notice of Termination with the Director. In fact, Mr. Ford signed a Form 3 Notice of Termination by Lessee of Rental Agreement which stated that he would move out of the apartment on September 24, 2009.

The Commission finds that, by filing a Form 3 Notice of Termination by Lessee of Rental Agreement, Mr. Ford had already consented to the termination of the rental agreement and accordingly, the appeal is denied.

However, the evidence before the Commission is that rent for the apartment has been fully paid for the month of October 2009. In addition, Mr. Ford noted that he has a new apartment "lined up" commencing November 1, 2009. Accordingly, the Commission amends Director's Order LD09-306 to put the sheriff in possession of the apartment on October 31, 2009 at 12:00 p.m. (noon).

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. **However, given that rent has been paid in full for the month of October 2009, Director's Order LD09-306 is hereby varied to put the sheriff into possession of the basement apartment at 15 Hillside Drive in Charlottetown, Prince Edward Island at 12:00 p.m. (noon) October 31, 2009.**

DATED at Charlottetown, Prince Edward Island, this 29th 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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