



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09030
Order LR10-03**

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, by Bertrand Sandjong against Orders No. LD09-310 and LD09-311, of the Director of Residential Rental Property, dated October 9, 2009.

BEFORE THE COMMISSION
on Friday, the 15th day of January, 2010.

John Broderick, Commissioner
Ernest Arsenault, 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 Bertrand Sandjong against Orders No. LD09-310 and LD09-311, of the Director of Residential Rental Property, dated October 9, 2009.

Order

Introduction

On October 23, 2009, the Commission received a Notice of Appeal filed by Bertrand Sandjong (Mr. Sandjong). Mr. Sandjong appealed Order Nos. LD09-310 and LD09-311 issued by the Office of the Director of Residential Rental Property (the Director) on October 9, 2009.

By way of background, Mr. Sandjong filed with the Director a Form 9 – Application re Determination of Security Deposit on March 16, 2009. Tremere's Ocean View Cottages (the Respondent), through its agent, Tim Tremere (Mr. Tremere) filed at Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement on March 18, 2009.

In Order LD09-310, the Director ordered:

“The lessor shall receive a payment of \$552.75”

In Order LD09-311, the Director ordered:

“The lessee shall pay the lessor an amount of \$1,612.25 on or before November 2, 2009.”

This appeal proceeded to a hearing before the Commission on November 23, 2009. Mr. Sandjong was present and testified at the hearing. Mr. Tremere, representing the Respondent, was also present and testified. Christopher Tremere appeared as a witness for the Respondent.

Evidence

Mr. Sandjong testified that he entered into a rental agreement with the Respondent in good faith. On several occasions, his car became stuck in the snow and he was frequently late for work. Mr. Sandjong submitted that the snow removal services did not meet the terms of the rental agreement.

Mr. Sandjong stated that the Respondent's staff had entered the unit on several occasions without permission. Mr. Sandjong stated that the Respondent claimed a repair had been performed in the bathroom. However, Mr. Sandjong stated that he could not see any changes after the alleged repair. Mr. Sandjong maintains that the unit was kept clean.

Mr. Tremere stated that the dispute over heating should be considered settled as a settlement was reached by way of a pre-hearing settlement conference before the Supreme Court. Mr. Tremere states that the winter of 2008-2009 was a bad winter for snow. Snow removal involved as many as three trips per day when warranted. Mr. Tremere stated that the Respondent's staff entered the unit to test the water system, repair a small leak under the bathtub and to repair frozen pipes. Mr. Tremere states that the Respondent's staff did not go upstairs and did not open any windows.

Mr. Tremere stated that Mr. Sandjong did not provide the required notice when he moved out of the unit.

Chris Tremere told the Commission that he never went upstairs in the unit during Mr. Sandjong's tenancy. He also noted that he had discovered the heat turned off in the bathroom.

Decision

The Commission hereby denies the appeal for the reasons that follow.

With respect to the issue of the cost of heat, the Commission notes that the parties settled this issue as evidenced by a consent order of the Supreme Court.

With respect to the issue of snow removal, the Commission finds that the Respondent took reasonable measures to provide snow removal services with equipment clearing snow as often as three times a day. It is understandable that a rural lane would be more difficult to maintain in a snowstorm than an urban street.

With respect to the privacy issue, the Commission accepts the evidence offered by the Respondent that its staff only entered the unit to deal with the frozen pipes and at no time went upstairs.

With respect to the issue of notice, the Commission finds that Mr. Sandjong did not have grounds for obtaining an early termination of the rental agreement and he did not provide the required notice for termination of the lease. Therefore the Commission finds that rent is owed for the months of March, April and May 2009.

The Commission finds that the evidence does not support a reduction in the security deposit determination set out in Order LD09-310.

Accordingly, the Commission hereby confirms the findings of the Director contained in Orders LD09-310 and LD09-311.

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. Order LD09-310 is hereby confirmed and the Respondent Tremere's Ocean View Cottages shall receive a payment of \$552.75.
3. Order LD09-311 is hereby confirmed and the Appellant Bertrand Sandjong shall pay the sum of \$1,612.25 as adjusted rent owing for the months of March, April and May 2009.

DATED at Charlottetown, Prince Edward Island, this **15th** day of **January**, 2010.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ernest Arsenault

Ernest Arsenault, 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.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.