



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09032
Order LR10-04**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Norma Malone against
Order LD09-340 of the Director of Residential
Rental Property, dated November 3, 2009

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

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 Norma Malone against Order LD09-340 of the Director of Residential Rental Property, dated November 3, 2009

Order

INTRODUCTION

On November 26, 2009 the Commission received a Notice of Appeal filed by Norma Malone (Ms. Malone). Ms. Malone appealed Order LD09-340 issued by the Office of the Director of Residential Rental Property (the Director) issued November 3, 2009.

By way of background, on July 31, 2009 Ms. Malone filed with the Director a Form 2 – Application for Enforcement of Statutory of Other Conditions of Rental Agreement.

In Order LD09-340 the Director ordered that:

“Deck. No Order for repairs to the deck is necessary as there is no violation of Section 6.1 of the Act.

Painting of the unit. No Order for painting is necessary on this item as there is no violation of Section 6.1 of the Act.

The lessee’s claim for return rent in the amount of \$700.00 is hereby dismissed.

*The lessor shall correct the following deficiency in order that there is compliance with Section 6.1. of the Act. **Such work shall be completed forthwith.***

1. Pot holes. The lessor shall carry out the necessary repairs to the potholes in the lessee’s parking space.”

The appeal was heard by the Commission on December 7, 2009. Ms. Malone represented herself. The Respondent Killam Properties Inc. (Killam) was represented by Wayne Beaton (Mr. Beaton).

EVIDENCE

Ms. Malone testified that she has two parking spaces; however, the wheel depressions were repaired in only one parking space, per the Director’s order. Ms. Malone requests that the Commission order that the other parking space be repaired.

Ms. Malone stated that the former landlord verbally promised a repainting of the apartment every five years. She has resided in the apartment for seven and one half years and the apartment has not been repainted. She requested that Killam repaint the apartment but they declined to do so.

Ms. Malone stated that when she rented the apartment, it had an outside deck finished in ceramic tile. In the spring of 2007, the ceramic tile was removed and replaced with pressure treated plywood. The plywood surface was never finished and she has received splinters in her feet as a result. Ms. Malone has requested that the deck surface be finished and requests a reduction in her rent in the meanwhile. She stated that she made some inquiries and was informed that pressure treated wood should be allowed to weather for a period of time and then have a preservative or waterproofer applied. She suggested in her evidence that a waterproof stain or an elastomeric coating might be satisfactory from an appearance point of view.

Mr. Beaton advised that there is only one parking space per tenant. He submitted that Killam would be willing to consider performing a paint 'touch up'. He submitted that Ms. Malone's unit did not need to be repainted. Mr. Beaton noted that the ceramic tile was replaced for safety reasons, as the old plywood had rotted underneath the ceramic tile.

DECISION

The Commission hereby allows the appeal in part for the reasons that follow.

With respect to parking, the Commission finds that there is only one parking space specifically assigned to each tenant. However, it appears that Ms. Malone, and possibly other tenants, sincerely believe that they have two parking spaces. The Commission will not order Killam to repair the depressions in the "second" parking space. However, it may be prudent for Killam to repair the "second" parking space if in fact Ms. Malone does actually use that space.

With respect to painting, Killam is not obligated to paint Ms. Malone's unit as the evidence indicates that the paint is in very good condition subject only to minor wear resulting from Ms. Malone's tenancy. Killam is not bound by the verbal offer of a re-paint every five years made by the previous landlord. However, Killam may wish to consider a repaint policy for long term tenants.

With respect to the deck, the Commission finds that Killam was justified in replacing the ceramic tile on the deck for safety reasons. Killam acted promptly and professionally when it discovered problems with the deck on another unit and then checked the deck on Ms. Malone's unit. However, it would appear that the deck does not yet have a finished surface. Ms. Malone has noted her concerns about receiving splinters. The Commission notes that an attractive deck was a selling point for Ms. Malone. The Commission agrees with Killam that ceramic tile is not a practical material for outside decks in Atlantic Canada. However, the Commission is of the view that a deck finished in uncoated pressure treated plywood is, in fact, unfinished. Accordingly, the Commission orders Killam to finish the deck to an appearance standard similar to the original deck not later than June 2010. The Commission will not, however, order a reduction in the rent as Ms. Malone noted that she was advised "by three establishments" that pressure treated wood should be allowed to weather for a while.

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 allowed in part.
2. The Respondent Killam Properties Inc. is hereby ordered to finish the deck, as noted in this decision, not later than June 2010.
3. In all other respects, Order LD09-340 is hereby confirmed.

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

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.

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.

IRAC141y-SFN(2009/11)