



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09038
Order LR10-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Nicole Ashford and Neil
Gallant against Order LD09-402 of the
Director of Residential Rental Property,
dated December 18, 2009

BEFORE THE COMMISSION
on Tuesday, the 26th day of January, 2010.

Allan Rankin, Vice-Chair
David Holmes, Commissioner
Gordon McCarville, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

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INTRODUCTION

On December 22, 2009, the Commission received a Notice of Appeal filed by Nicole Ashford and Neil Gallant (the Appellants). The Appellants appealed Order No. LD09-402 issued by the Office of the Director of Residential Rental Property (the Director) on December 18, 2009.

This matter concerns residential premises situate at 184 Cumberland Street, Apartment #5, Charlottetown, Prince Edward Island, said premises owned by Ken and Evelyn Jenkins (Mr. and Mrs. Jenkins).

Mr. and Mrs. Jenkins filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated November 21, 2009.

In Order LD09-402 the Director stated:

“Where notice of termination has been given in accordance with this Act, and all remedies in relation thereto have been exhausted, the lessee shall deliver up possession of the residential premises.

Therefore the lessee shall vacate the residential premises at 12:00 p.m., Wednesday, December 23, 2009.”

This appeal proceeded to a hearing before the Commission on January 6, 2010. Nicole Ashford (Ms. Ashford) represented the Appellants. Evelyn Jenkins (Mrs. Jenkins) represented Mr. and Mrs. Jenkins.

EVIDENCE

Ms. Ashford filed a letter from Neil Gallant as an exhibit. Ms. Ashford noted that she had problems with “getting to the bank”. She stated that they had the money to pay the rent for December. However, they received “different stories” on what effect paying this rent would have on the status of the rental agreement.

Mrs. Jenkins testified that she received from Ms. Ashford three cheques written with the following dates and amounts: December 11, 2009 for \$300.00, December 18, 2009 for \$400.00 and January 1, 2010 for \$400.00. Mrs. Jenkins did not attempt to cash these cheques. Rather, she inquired at Ms. Ashford's financial institution and was advised that "the money was not there".

DECISION

The Commission denies this appeal for the reasons that follow.

The monthly rent is \$675.00. The evidence before the Commission is that Mr. and Mrs. Jenkins received a payment of \$300.00 cash towards the November 2009 rent. The Appellants owed the remaining \$375.00 for the November 2009 rent. The Appellants also owe \$675.00 rent for December 2009 and now owe \$675.00 rent for January 2010. While Ms. Ashford wrote out three cheques totaling \$1100.00, the Commission accepts the evidence of Mrs. Jenkins that the funds to honour these cheques were not available.

When a tenant is in arrears and is facing eviction, efforts to pay up the arrears must be made in good faith. Such good faith can be demonstrated by paying cash [and receiving a receipt to prove payment was made], paying by way of certified cheque or paying by way of money order. The onus is on the tenant to ensure that the landlord is paid the rent. However, in this situation, Ms. Ashford wrote out three ordinary cheques and presented these to Mrs. Jenkins. Even if the cheques had been honoured, the Appellants still would have been in arrears. However, Mrs. Jenkins discovered that there were insufficient funds in Ms. Ashford's account to honour these cheques.

The Commission finds that there is no error in the Director's Order LD09-402. Further, there was no obligation on Mr. and Mrs. Jenkins to accept any "payment plan".

Accordingly, the Commission denies this appeal and confirms the Director's Order LD09-402 in its entirety.

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 LD09-402 issued by the Director is confirmed in its entirety.**
- 3. The sheriff is hereby directed to put Ken and Evelyn Jenkins in immediate possession of the residential premises situate at 184 Cumberland Street, Apartment #5, Charlottetown, Prince Edward Island.**

DATED at Charlottetown, Prince Edward Island, this 26th day of
January, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd.) *David Holmes*

David Holmes, Commissioner

(Sgd.) *Gordon McCarville*

Gordon McCarville, 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)