



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10003
Order LR10-08**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Nicole Ashford and Neil
Gallant against Order LD10-015 of the
Director of Residential Rental Property,
dated January 19, 2010

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

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
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INTRODUCTION

On January 20, 2010, the Commission received a Notice of Appeal filed by Nicole Ashford and Neil Gallant (the Appellants). The Appellants appealed Order No. LD10-015 issued by the Office of the Director of Residential Rental Property (the Director) on January 19, 2010.

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 December 23, 2009.

In Order LD10-015 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.

IT IS THEREFORE ORDERED THAT:

1. Possession of the residential premises is to be surrendered to the lessors and the sheriff is directed to put the lessors in possession of the residential premises at 12:00 p.m., Wednesday, January 20, 2010.”

This appeal proceeded to a hearing before the Commission on January 26, 2010. Both of the Appellants were present. Evelyn Jenkins (Mrs. Jenkins) represented Mr. and Mrs. Jenkins. Carol Jenkins was also present with Mrs. Jenkins.

EVIDENCE

The Appellants stated that they have no place to go right now. They are looking for a new place to rent. They offered to pay Mr. and Mrs. Jenkins, but Mr. and Mrs. Jenkins would not accept a payment plan. The Appellants stated that they didn't have the money "right on the spot" to pay the outstanding rent but they would have the money by the end of February. The Appellants agreed that they owed \$1725.00 in rent. They advised that the bank account on which the four cheques were written [Exhibit E-8] was now closed.

Mrs. Jenkins stated that the four cheques [Exhibit E-8] were "no good". Mrs. Jenkins advised the Commission that if the Appellants could come up with the outstanding rent at the hearing, they could stay.

DECISION

The Commission denies the appeal for the reasons that follow.

The monthly rent is \$675.00. As per Order LR10-07, the Appellants last paid \$300.00 cash towards rent in November 2009. They owe \$375.00 rent for the November 2009, \$675.00 rent for December 2009 and \$675.00 rent for January 2010.

The Commission finds that the Appellants presently owe \$1725.00 in rent.

The Appellants' Notice of Appeal contains the following reasons for appeal:

They will not return my phone calls and I try to pay them rent and I have know [sic] place to go until sometime in Feb and I have two kids.

The Commission wishes to point out that the **Rental of Residential Property Act** (the **Act**) does not obligate a landlord to accept a payment plan when a tenant is in arrears of rent. The **Act** does not alter the eviction process on the basis of children residing in the premises. The commonly held belief that tenants cannot be evicted in the wintertime has no statutory basis of support and therefore this belief simply does not apply in the Province of Prince Edward Island. The Commission has no discretion to re-write the **Act**.

In Order LD10-015 the Director noted the following:

The lessee, Nicole Ashford, acknowledged that the rent for December 2009 and January 2010 had not been paid and admitted at the hearing that she did not have the rent available at that time even if the lessors had been willing to accept it at the hearing.

Now, one week later, the Appellants advise the Commission that they cannot pay but they offer to pay by the end of February 2010.

The evidence before the Commission is that Ms. Ashford issued four cheques to Mrs. Jenkins but these cheques were intended to be a promise to pay to be returned by Mrs. Jenkins after a cash payment was received. However, no cash payments were presented. Apparently sometime after the date of the most recently dated cheque, Ms. Ashford closed her account.

The Commission finds that the Appellants have not demonstrated good faith with respect to dealing with their rental arrears.

The Commission finds that there is no error in the Director's Order LD10-015. There is no obligation on Mr. and Mrs. Jenkins to accept any payment plan.

The Commission denies this appeal and hereby confirms the Director's Order LD10-015 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 LD10-015 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

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)