



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09036
Order LR10-12**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Randy Pitre and Wayne
Richards against Order No. LD09-374 of the
Director of Residential Rental Property dated
December 1, 2009.

BEFORE THE COMMISSION
on Wednesday, the 3rd day of February,
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 Section 25 of the Rental of Residential Property Act, by Randy Pitre and Wayne Richards against Order No. LD09-374 of the Director of Residential Rental Property dated December 1, 2009.

Order

INTRODUCTION

On December 15, 2009, the Commission received a Notice of Appeal filed by Randy Pitre and Wayne Richards (the Appellants) The Appellants appealed Order No. LD09-374 issued by the Office of the Director of Residential Rental Property (the Director) on December 1, 2009.

By way of background, Lennon Waterman (Mr. Waterman) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement and a Form 9 – Application re Determination of Security Deposit both dated July 21, 2009.

In Order LD09-384 the Director stated:

“As the lessors did not serve the lessee with a Notice of Intention to Retain Security Deposit (Form 8) pursuant to Section 10.(5) of the Act, the Officer finds that the security deposit of \$140.00 shall be returned to the lessee..”

As a result, the lessors shall return the security deposit in the amount of \$140.00 to the lessee.”

This appeal proceeded to a hearing before the Commission on January 6, 2010. The Appellant Randy Pitre (Mr. Pitre) was present at the hearing. The Respondent was not present at the hearing.

EVIDENCE

Mr. Pitre submitted that the evidence supports a finding that the Appellants should be able to retain the \$140.00 security deposit. He submitted that the Appellants were prevented from serving a Form 8 as Mr. Waterman had moved out and had not provided a forwarding address.

DECISION

The appeal is denied for the reasons that follow.

Subsection 10(5) of the **Rental of Residential Property Act** (the **Act**) reads as follows:

“10(5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation. 1998,c.100,s.2.”

Section 33 of the **Act** deals with the forms of service which may be used:

“33. (1) Any notice, process or document to be served by or on a lessor, lessee or the Director or the Commission is sufficiently served if

(a) delivered personally; or

(b) sent by ordinary, certified or registered mail

(i) to the lessor at the address given under section 31,

(ii) to the lessee at the address of the premises,

(iii) to the Director at the address of his office;

(iv) to the Commission at the address of its office.

(2) Where a notice cannot be delivered personally to a lessee by reason of his absence from the premises or by reason of his evading service, the notice may be served on the lessee

(a) by serving it on any adult person who apparently resides with the lessee;

(b) by posting it in a conspicuous place upon some part of the premises or a door leading thereto; or

(c) by sending it by ordinary, certified or registered mail to the lessee at the address where he resides.

(3) Where a document is delivered by ordinary mail, it is deemed to have been delivered on the third day after the date of mailing. 1988,c.58,s.33; 1991,c.18,s.22 {eff.} Nov. 4/91.”

In the present matter, the Appellants failed to serve a Form 8 on Mr. Waterman. While the Commission appreciates that Mr. Waterman's absence from the premises may have been problematic for the Appellants, the Commission notes that section 33 of the **Act** sets out an assortment of forms of service which a landlord or tenant may use. This assortment of forms of service includes options for serving a tenant who is absent from or evading service.

Subsection 10(5) of the **Act** is clear. A landlord seeking to claim all or part of a security deposit must serve the tenant with a notice of intention to retain security deposit in the form prescribed by regulation. In the present matter, the Appellants failed to serve such notice on Mr. Waterman.

As the Appellants have not served Mr. Waterman with a Form 8, the Appellants have failed to meet the statutory requirements for retaining a security deposit and therefore the Commission has no choice but to deny this appeal.

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 LD09-374 remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this **3rd** day of **February**, 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)