



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10014
Order LR10-23**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Jodi Van Iderstine against
Orders LD10-180 and LD10-181 of the
Director of Residential Rental Property dated
June 29, 2010.

BEFORE THE COMMISSION
on Tuesday, the 17th day of August, 2010.

Allan Rankin, Vice-Chair
Chester MacNeill, Commissioner
Michael Campbell, 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 July 19, 2010 the Commission received a Notice of Appeal filed by Jodi Van Iderstine (the Appellant).

By way of background, Brian Braaksma (the Respondent) provided to the Appellant a Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 4, 2010. On May 14, 2010, the Appellant filed with the Office of the Director of Residential Rental Property (the Director) a Form 6 – Application by Lessee to Set Aside Notice of Termination. On May 18, 2010, the Director informed the Appellant that her application was deficient. On May 28, 2010 the Appellant faxed a completed Form 4 to the Director.

In Order LD10-180, the Director found that:

“IT IS THEREFORE ORDERED THAT

- 1. The Lessee’s application to set aside the Notice of Termination dated May 4, 2010 is not valid.*
- 2. The Notice of Termination dated May 4, 2010 is valid.*
- 3. The rental agreement between the parties is terminated effective May 27, 2010.”*

In Order LD10-181, the Director found that:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon, July 6, 2010.*
- 2. The Lessor shall not re-rent the premises until the Director is notified in writing that the repairs set out in the letter of February 25, 2010 by Environmental Health Officer Jack Mallard are completed, and an inspection is conducted by the Director to ensure that the deficiencies set out in that letter have been rectified.”*

The appeal was heard by the Commission on August 16, 2010. The Appellant was present along with Deborah Kelly. The Respondent was represented by T. Daniel Tweel. Don Warren testified on behalf of the Respondent.

The Appellant submits that there were numerous very serious deficiencies with the residential premises, including lack of heat in the winter. She submits that she attempted to contact the Respondent and the Respondent's agent, Mr. Warren, but repairs were not made. She then paid for the repairs herself. She submits that she has paid her rent in full through the payment of a \$250.00 security deposit, payment of \$500.00 rent in November 2009, payment of \$500.00 rent in December 2009 and payment for various necessary repairs. The Appellants submits that the Director was biased toward the Respondent.

The Respondent submits that the Appellant has not paid rent since December 2009.

The Commission finds no indication of any bias, or a reasonable apprehension of bias, on the part of the Director. Director's Order LD10-181 noted the serious deficiencies of the residential premises, the objectively documented expenses of \$737.49 paid by the Appellant, accepted the Appellant's evidence that she tried to discuss the deficiencies with the Respondent or his agent with little success and the Director reviewed additional expenses which could have increased the Appellant's total outlay to \$1,707.49. However, the Director quite correctly noted that the "...Act does not permit a lessee to withhold rent in order to force the lessor to make repairs, even if the repairs are clearly needed."

The Director correctly calculated the rent owed as of the end of May 2010 as \$2,500.00. Since that time, the Appellant has remained in the residential premises for June, July and August to the date of the hearing. As of the end of July, the rent owed is \$3,500.00.

Throughout the hearing before the Commission, the Appellant insisted that she had paid her rent in full. There is no objective evidence to support this assertion.

The Commission notes that it is the standard and consistent practice of the Director to not record hearings. The Commission wishes to point out that, unless there is a statutory requirement to record hearings, the policy decision to record, or not to record, hearings remains with the tribunal. The Commission also wishes to point out that it is normally highly inappropriate for a party to record a hearing.

The Commission confirms Director's Orders LD10-180 and LD10-181 in their entirety with one exception. At the hearing, Counsel for the Respondent suggested that the date for the surrendering of possession of the residential premises could be revised to August 31, 2010. The Commission agrees with this suggestion and accordingly, Director's Order LD10-181 is amended to put the lessor [Respondent] in possession of the residential premises at 12:00 noon, August 31, 2010. In all other respects, Director's Orders LD10-180 and LD10-181 are hereby confirmed.

However, the facts of this appeal raise troubling concerns for the Commission. The residential premises were clearly deficient. Unfortunately, the lines of communication between tenant and landlord did not function correctly in this matter and the Respondent's agent appeared to lack the authority to respond swiftly to urgent matters. Prince Edward Island has a notorious history of absentee landlordism, wherein the relationships between non-resident property owners living at a distance from their tenants frequently were unpredictable and less than judicious. There are contemporary parallels to be drawn and non-resident landlords renting their properties should ensure that all responsibilities falling to them under the ***Rental of Residential Property Act*** (the **Act**) can be met in a practical sense. There should always be a resident property manager engaged to act on the landlord's behalf, given that the landlord is living at some distance from the premises being leased or rented, and realtors should only take on the property management role officially and when it is part of their business offering. In such a way, both non-resident landlords and their tenants can be assured of ongoing communications and a fair and business like tenant-landlord relationship.

Notwithstanding the foregoing, a tenant is not permitted to withhold rent.

In a situation where a landlord appears to fail to respond to an alleged breach of a statutory condition, the appropriate action for a tenant is to contact the Office of the Director to file a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement, pursuant to section 8 of the **Act**.

Further, the Commission views as unacceptable any person whispering answers to a witness who is undergoing cross-examination. Such behavior shows contempt to the hearing process and leaves the Commission with no choice but to assign no evidentiary weight to any such "coached" answers.

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 denied.**
2. **Director's Order LD10-181 is amended to put the lessor in possession of the residential premises at 12:00 noon, August 31, 2010.**
3. **In all other respects, Orders LD10-180 and LD10-181 are hereby confirmed.**

DATED at Charlottetown, Prince Edward Island, this 17th day of August, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*
Allan Rankin, Vice-Chair

(Sgd.) *Chester MacNeill*
Chester MacNeill, Commissioner

(Sgd.) *Michael Campbell*
Michael Campbell, 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)