



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10018
Order LR10-28**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Weymouth Properties Ltd.
against Order LD10-240 of the Director of
Residential Rental Property, dated August
24, 2010.

BEFORE THE COMMISSION
on Friday, the 22nd day of October, 2010.

John Broderick, Commissioner
Michael Campbell, Commissioner
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 Weymouth Properties Ltd. against Order LD10-240 of the Director of Residential Rental Property, dated August 24, 2010.

Order

On September 3, 2010 the Commission received a Notice of Appeal filed by Weymouth Properties Ltd. (the Appellant). The Appellant appealed Order LD10-240 issued by the Office of the Director of Residential Rental Property (the Director) on August 24, 2010.

By way of background, the Appellant filed with the Director a Form 8 – Notice of Intention to Retain Security Deposit dated January 18, 2010. On February 10, 2010 Carol Callaghan (the Respondent) filed a Form 9 – Application re Determination of Security Deposit.

In Order LD10-240, the Director found:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee is entitled to the security deposit funds in the amount of \$292.50 currently being held in trust.*
- 2. Payment shall be made upon expiry of the appeal period.”*

The Commission heard the appeal on September 23, 2010. Wayne Bevan and Betty Morrison represented the Appellant and appeared in person. The Respondent was present but did not testify. Michelle Callaghan and Mike Hayward represented the Respondent and also testified on her behalf.

Ms. Morrison explained that it is the policy of the Appellant to require a security deposit based on one half of a month’s rent. This amount is calculated based on the rent as of the date of the security deposit payment. The rent for the apartment in January 2010 was \$585.00 per month so as a result, the security deposit was calculated as \$292.50.

The Appellant’s representatives stated that the Respondent was informed that the rent would be increased, effective February 1, 2010, to \$597.00 and it was agreed that the Appellant’s tenancy would commence at that time. Ms. Morrison told the Commission that Mr. Hayward and Ms. Callaghan were in another part of the apartment when the Respondent was informed of the February rental increase. Ms. Morrison and Mr. Bevan submitted that the Director erred by assuming that the agreed rent was double the amount of the security deposit.

Mr. Hayward and Ms. Callaghan both testified that they were present with the Respondent when rent was discussed. They were told that the rent was \$585.00 per month. It was not until they saw the January 11, 2010 "To Whom it may concern:" letter from the Appellant (Exhibit E-8) that they were made aware of the rental increase. They submit that this increase amounted to a unilateral change to the rental agreement.

The Commission accepts the position of the Appellant that the security deposit was based on the current rent for the apartment in effect in January 2010 and thus was not indicative of the agreed rent between the parties. However, the crux of the issue before the Commission is whether the Respondent had the capacity to fully understand that the current rent was \$585.00 per month, but would increase to \$597.00 per month at the same time as her tenancy was to begin in February 2010.

According to Exhibit E-4, the Respondent had recently experienced a critical incident. She then made the decision that she wanted to move to a new apartment and she met with the Appellant's representatives on January 6, 2010. Exhibit E-4 notes that the Respondent was still in shock.

The Commission finds that the Appellant had informed the Respondent on January 6, 2010 that there would be a rental increase in February 2010. However, Ms. Callaghan, the Respondent's daughter, and Mr. Hayward, the Respondent's son-in-law, were not present when the increase was discussed. The Commission is of the view that, for a contract to be binding on the parties, there must be a meeting of the minds. In the present case, very unusual circumstances had occurred and it is understandable that the Respondent would not have comprehended the fact that the rent would increase at the time she was to start her tenancy. Since Ms. Callaghan and Mr. Hayward were not present when the rental increase was discussed, they did not have an opportunity to discuss this with the Respondent and they were legitimately caught off guard by the rental increase noted in Exhibit E-8.

The Commission finds that the Respondent understood the rent to be \$585.00 per month and had agreed to that sum. The Commission also finds that the Appellant's representatives thought that they had clearly communicated the rental increase to the Respondent and that the Respondent was in agreement with that increase. However, through no fault of either party, there was no meeting of the minds. Accordingly, the Commission finds that the Respondent had not agreed to rent in the amount of \$597.00 per month, effective February 1, 2010.

Accordingly, the Commission denies the appeal, and finds the Respondent entitled to a return of her security deposit.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act (the Act)*:

IT IS ORDERED THAT

- 1. The appeal is hereby denied.**
- 2. The Respondent Carol Callaghan is entitled to the security deposit funds in the amount of \$292.50 currently being held in trust.**

3. **Payment shall be made upon the expiry of the appeal period to the Court. This appeal period is set out in subsection 26(2) of the Act.**

DATED at Charlottetown, Prince Edward Island, this **22nd** day of **October**, **2010**.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Michael Campbell

Michael Campbell, Commissioner

(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)