



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10021
Order LR10-29**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Christopher Higgins against
Order LD10-256 of the Director of Residential
Rental Property, dated September 9, 2010

BEFORE THE COMMISSION

on Tuesday, the 16th day of November, 2010.

Allan Rankin, Vice-Chair
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 Christopher Higgins against
Order LD10-256 of the Director of Residential
Rental Property, dated September 9, 2010**

Order

On September 17, 2010 the Commission received a Notice of Appeal from Christopher Higgins (the Appellant) requesting an appeal of Order LD10-256 dated September 9, 2010 issued by the Director of Residential Rental Property (the Director).

By way of background, on May 4, 2010 Tyler MacKenzie (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement. On May 14, 2010 the Appellant filed with the Director a Form 8 - Notice of Intention to Retain Security Deposit.

In Order LD10-256, the Director found that:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee [sic] shall pay to the lessee the sum of \$400.00.**
- 2. Payment shall be made upon expiry of the appeal period.”**

The Commission heard this appeal on October 14, 2010. The Appellant was present. The Respondent was present and was represented by Rick Beck (Mr. Beck). Lisa Gallant testified on behalf of the Respondent.

EVIDENCE

The Appellant testified that the Respondent paid him \$400.00 on March 30, 2010. The Appellant thought that the Respondent was taking the apartment. The Appellant states that the \$400.00 was a partial payment toward the April rent and not a security deposit. Shortly after the first day of April, the Respondent advised the Appellant that he did not want the apartment. The Appellant testified that he told the Respondent that if he found someone else to take the apartment he would give the money back. The Appellant told the Commission that he advertised the apartment on *Kijiji* and in the *Guardian*. The Appellant stated that he tried his best to re-rent the apartment for April but was only able to find a new tenant commencing in May 2010.

The Respondent submitted that the \$400.00 payment was a security deposit and referred to a March 30, 2010 receipt for a “damage deposit” in the amount of \$400.00 to support his position. On March 31 before noon the Respondent advised the Appellant that he did not want the apartment and he asked for his security deposit to be returned.

Lisa Gallant, a friend of the Respondent, testified that she wrote the April 28, 2010 letter filed as Exhibit E-1(d). She testified that she phoned the Appellant on April 7, 2010 to inquire about the availability of the apartment at 304 Richmond Street. Ms. Gallant testified that the Appellant told her that the apartment was rented and was no longer available.

DECISION

The Commission denies this appeal for the reasons that follow.

While the Appellant insists that the \$400.00 payment was a partial payment for April's rent and not a damage or security deposit, the receipt the Appellant issued to the Respondent for that payment very clearly notes the words "Damage Deposit! 304 Richmond Street".

The Appellant introduced into evidence Exhibit E-12 which is an invoice for a newspaper advertisement to be placed in the *Guardian*. Presumably this document was introduced by the Appellant to establish that he advertised the apartment in an effort to re-rent the apartment following the Respondent's decision not to take the apartment. However, the date of the invoice does not support such a contention. It is the evidence of the Appellant that he was advised shortly after April 1 that the Respondent did not want the apartment. It is the evidence of the Respondent that he advised the Appellant of this before noon on March 31, 2010. In either case, the newspaper advertisement invoice was prepared before the day that the Respondent told the Appellant that he did not want the apartment.

The Appellant relies on Exhibit E-13 to establish that he was able to re-rent the apartment starting in May. However, Exhibit E-13 is a receipt issued to another tenant noting that May rent was paid. It does not indicate that the tenancy to that other tenant began in May.

The Commission finds the Respondent and Ms. Gallant to be credible witnesses. The Commission accepts the evidence of Ms. Gallant that she was informed by the Appellant on April 7, 2010 that the apartment was rented and was no longer available.

Accordingly, the Commission denies the appeal and confirms the Director's Order LD10-256, subject to a correction of a typographical error.

The Commission wishes to point out that the appeal period is set out in the first **Notice** attached to the Commission's Order.

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. The Director's Order LD10-256 is hereby confirmed, subject to the correction of a typographical error, that portion of said Order amended to now read:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay to the lessee the sum of \$400.00.**
- 2. Payment shall be made upon the expiry of the appeal period.”**

DATED at Charlottetown, Prince Edward Island, this **16th** day of **November, 2010.**

BY THE COMMISSION:

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

(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)