



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR10023
Order LR11-02**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Jason Leard against Order
LD10-327 of the Director of Residential
Rental Property, dated November 15, 2010

BEFORE THE COMMISSION
on Thursday, the 6th day of January, 2011.

Allan Rankin, Vice-Chair
John Broderick, Commissioner
Anne Petley, 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 Jason Leard against Order
LD10-327 of the Director of Residential
Rental Property, dated November 15, 2010**

Order

On November 18, 2010 the Commission received a Notice of Appeal from Jason Leard (the Appellant) requesting an appeal of Order LD10-327 dated November 15, 2010 issued by the Director of Residential Rental Property (the Director).

By way of background, Daniel Bourque (the Respondent) filed a series of Forms 4's - Notice of Termination by Lessor of Rental Agreement and on October 29, 2010, the Director issued Order LD10-311 which states, in part:

"Based on the information and evidence before me, the Officer finds that the information and evidence shows that the lessee has been habitually and persistently late in the payment of rent to the lessor for the residential premises.

...

IT IS THEREFORE ORDERED THAT

1. *The rental agreement between the lessor and the lessee for the residential premises is hereby terminated as of 12:00 midnight November 4, 2010. The lessee shall vacate the residential properties on or before 12:00 midnight November 4, 2010.*

NOTE: *Where the lessee fails to comply with this Order the lessor may make application for an Order that possession of the residential premises be surrendered to the lessor and directing the sheriff to put the lessor in possession of the residential premises."*

On November 12, 2010 the Respondent filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

On November 15, 2010 the Director issued Order LD10-327 which states, in part:

*"The lessee continues to occupy the residential premises as of this date and is in violation of **Order LD10-311.***

...

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, November 16, 2010."*

The Commission heard this appeal on December 2, 2010. The Appellant was present. The Respondent was also present.

EVIDENCE

The Appellant and the Respondent in their testimony stated that they both agree that during this rental arrangement, various cheques in payment of rent were returned NSF by the bank and that there were times when rent payment was in arrears for lengthy time periods. The evidence before the Commission is that the Appellant has paid the rent for October, November and December 2010 using money orders.

The Appellant stated that in 2009 he was unaware that the cheques were being returned by the bank and as soon as the Respondent informed him of the problem, he paid in full. The Appellant explained that the lapse in rent payments during the winter of 2010 was caused by his financial hardship.

The Appellant admits his payments have not always been on time but he does want to resolve the issue and continue renting the premises and he is also interested in purchasing the property if the Respondent is going ahead with selling the parcel.

The Respondent described the unusual effort required on his part to collect the rent. He also explained the financial difficulty caused to him by the delay in timely rent payment. This experience caused him to decide to terminate the rental agreement with the Appellant.

The Respondent agrees the Appellant has paid up; however, he does not have trust in the Appellant's ability to maintain full rent payment on a timely basis. The Respondent confirmed he is interested in selling the property although he has not listed it as yet.

DECISION

The Commission allows this appeal in part for the reasons that follow.

While the Appellant has had problems making full payment on a timely basis, he is now paid up thereby showing he is operating in good faith. The Commission believes the Appellant is truly interested in purchasing the property although his financial ability to do so has not been confirmed.

The Respondent had previously shown some tolerance for late payment. The Appellant may have reason to expect continued tolerance from the Respondent.

The rental arrangement in this situation is an oral agreement which results in a certain amount of vagueness in the rights and responsibilities of both parties. The Appellant testified that originally there was a rent to own agreement between the parties but that agreement was terminated. The Appellant recently paid the outstanding sewer bill. The Commission believes this shows a true interest on behalf of the Appellant to acquire this property.

The Commission finds that the rental agreement is terminated but the effective date of the termination is March 31, 2011 conditional on the rent being paid and received in full on or before the first day of January, February and March, 2011.

Accordingly, the Commission allows the appeal in part.

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 allowed in part.
2. That Order LD10-327 is varied by the termination date of the rental agreement being extended to March 31, 2011 on the condition that all rent is paid and received in full on or before the commencement of each month, that is to say, on or before January 1, February 1, and March 1, 2011.
3. In the event that payment is not received on or before the commencement of any of the months described in clause 2 above, the terms of Order LD-327 shall be enforceable and the sheriff shall be directed to put the lessor [Respondent] in possession of the premises forthwith.

DATED at Charlottetown, Prince Edward Island, this **6th** day of **January**, 2011.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Anne Petley*

Anne Petley, 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)