



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11003
Order LR11-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by James Gregory Lipton
against Order LD11-020 of the Director of
Residential Rental Property, dated January
17, 2011

BEFORE THE COMMISSION
on Thursday, the 3rd day of March, 2011.

John Broderick, Commissioner
Michael Campbell, Commissioner
Ferne MacPhail, 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 James Gregory Lipton
against Order LD11-020 of the Director of
Residential Rental Property, dated January
17, 2011

Order

On February 2, 2011 the Commission received a Notice of Appeal from James Gregory Lipton (the Appellant) requesting an appeal of Order LD11-020 dated January 17, 2011 issued by the Director of Residential Rental Property (the Director).

By way of background, on September 9, 2010 Laura Woodworth (Ms. Woodworth), on behalf of herself and Brenda Lee Woodworth, (collectively the Respondents) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement. On September 24, 2010 the Appellant filed with the Director a Form 8 - Notice of Intention to Retain Security Deposit. On October 1, 2010 the Respondent filed with the Director a Form 9 – Application re Determination of Security Deposit.

In Order LD11-020, the Director found that:

*“The evidence shows that on September 24, 2010 Catherine Flanagan, Director of Residential Rental Property, verbally advised the lessor of his obligation to file the security deposit funds with this office within five days of having been served the Form 9 by the lessees; however, the lessor did not comply. The lessor acknowledged this. The Officer finds that the lessor violated Section 10.(9) of the **Act**.*

As a result, the lessor shall return the security deposit in the amount of \$625.00 to the lessees. The Officer finds that there is no interest payable on the security deposit as the interest rate on security deposits is 0.00% for 2010.

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay the lessees an amount of \$625.00 on or before February 9, 2011.”**

The Commission heard this appeal on February 17, 2011. The Appellant was present. Ms. Woodworth was also present.

The Appellant testified that, as Ms. Woodworth took the keys for #3 Spring Street on September 1, 2010, he had the impression that she was moving in. When the Appellant returned an hour later, he was informed that she was not taking the unit. The Appellant believed that Ms. Woodworth had accepted “#3” and therefore he thinks he is “in the right” to offer to return \$200.00 of the security deposit and retain \$425.00.

Ms. Woodworth submitted that she took the keys to examine “#3” and she wanted to discuss the matter with her mother who was in Newfoundland. She noted that the lease was for “#5” but that unit was not available since the Appellant rented “#5” to somebody else.

The Commission finds that there never was a rental agreement between the parties for #3 Spring Street. There was a rental agreement between the parties for #5 Spring Street signed on April 13, 2010 for the period September 1, 2010 to September 1, 2011. However, this rental agreement was terminated by the Appellant on May 26, 2010 when he, unknown to the Respondents, entered into a rental agreement for #5 Spring Street with another tenant for the period June 1, 2010 to May 31, 2011. He had plenty of time to inform the Respondents of this fact but he did not. The Appellant did not provide the Respondents with a new rental agreement for #3 Spring Street. The Respondents never paid a security deposit for #3 Spring Street. Upon the unilateral termination of the rental agreement by the Appellant in May 2010, the Respondents were entitled to a return of their \$625.00 security deposit which they had paid for #5 Spring Street. Ms. Woodworth never gave the Appellant a rent cheque for #3 Spring Street and she informed him only one hour later, after phoning her mother (co-Respondent Brenda Lee Woodworth), that she did not want #3 Spring Street.

The Commission finds that the Director’s decision was entirely reasonable and in accordance with the essentials of contract law. Accordingly, the Commission will not reverse the decision of the Director.

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 LD11-020 is hereby confirmed and remains in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this **3rd** day of **March**,
2011.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Michael Campbell

Michael Campbell, Commissioner

(Sgd.) Ferne MacPhail

Ferne MacPhail, 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)