



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11004
Order LR11-08**

IN THE MATTER of an appeal, under section 25 of the Rental of Residential Property Act, by MacDonald Construction Co. Ltd. against Order LD11-052 of the Director of Residential Rental Property dated March 3, 2011.

BEFORE THE COMMISSION
on Tuesday, the 22nd day of March, 2011.

Allan Rankin, Vice-Chair
Michael Campbell, Commissioner
Leonard Gallant, 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 MacDonald Construction Co. Ltd. against Order LD11-052 of the Director of Residential Rental Property dated March 3, 2011.

Order

On March 8, 2011 the Commission received a Notice of Appeal from MacDonald Construction Co. Ltd. (the Appellant) requesting an appeal of Order LD11-052 dated March 3, 2011 issued by the Director of Residential Rental Property (the Director).

By way of background, on February 22, 2011 the Appellant filed an application, pursuant to section 8(d.3) of the Act, for enforcement of statutory condition 6.10, requesting an order that possession of the residential premises be surrendered to the Appellant and directing the sheriff to put the Appellant in possession. This application included a Form 4 Notice of Termination by Lessor of Rental Agreement dated February 1, 2011 to be effective February 21, 2011 to Stephanie Lund and Chad Lund (the Respondents).

A Notice of Hearing dated February 23, 2011 was sent to the parties advising them that a hearing was scheduled for March 1, 2011 before the Director. The hearing was held as scheduled and the Director ordered that the Appellant's application be dismissed and that the rental agreement remain in effect.

At the hearing before the Commission, the Appellant was represented by Roddy MacDonald. Mr. MacDonald also gave evidence. Peter Clark also offered evidence for the Appellant. Stephanie Lund (Ms. Lund) represented the Respondents. Ms. Lund also gave evidence. Wilfred McKenna also offered evidence for the Respondents.

Position of the Appellant

The Appellant contends that the only rental payment received since December 2010 was a cash payment for \$110.00 made by the Respondent Ms. Lund on January 14, 2011. The Appellant notes that the monthly rent for the residential premises is \$795.00.

Position of the Respondent

The Respondent Ms. Lund contends that she made a payment of \$795.00 on January 14, 2011 and another payment of \$795.00 on January 30, 2011.

The Commission's Decision

The Commission notes that all witnesses took the oath promising to tell the truth. That said, two very different stories surfaced at the hearing. Somebody is not telling the truth.

At the hearing, the Appellant filed Exhibit E-11, a redacted record referring to the residential premises as "York Grey". No civic number was given. Mr. MacDonald notes that the designation was given prior to the assignment of mandatory civic addresses. This document reveals that the rent was paid without any problems in June and July, 2010. In August 2010, two payments of \$495.00 and \$300.00 were received. In September 2010, one full payment of \$795.00 was received. In October 2010 one payment of \$395.00 was made, leaving \$400.00 owing. In November 2010 one payment of \$200.00 was made, leaving accrued rent owing of \$995.00. In December 2010 two payments were made, one for \$110.00 and another for \$885.00, reducing accrued rent owing to \$795.00. In January 2011 one payment of \$110.00 was received, leaving accrued rent owing of \$1480.00. In February 2011, no payment was received, leaving accrued rent owing of \$2275.00.

Ms. Lund maintains that Exhibit E-7 establishes that she did, in fact, make two cash payments of \$795.00 each to the Appellant in January 2011.

The Commission finds that Exhibit E-7 does not establish that two cash payments of \$795.00 each were made in January 2011.

The Commission notes that the Director did not have the benefit of Exhibit E-11. Such information may be considered by the Commission on appeal, as an appeal hearing before the Commission is a *hearing de novo*.

While the Commission agrees that the Appellant should change its practice of not issuing receipts for cash payments, the Commission also notes that the Respondents could have offered payment by way of cheque, certified cheque or money order. While the record keeping in evidence is sloppy, Exhibit E-11 is the best evidence before the Commission.

The Commission hastens to point out that while receipt books are handy, the essentials of a receipt can be provided with blank paper, a pen and the necessary information filled in.

Accordingly, the Commission hereby allows the appeal and orders that the rental agreement be terminated effective March 31, 2011. On this basis, the Respondents must vacate the residential premises on or before March 31, 2011.

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.
2. The rental agreement is hereby terminated, effective March 31, 2011. As a result, the Respondents must vacate the residential premises on or before March 31, 2011.

DATED at Charlottetown, Prince Edward Island, this 22nd day of March, 2011.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd.) *Michael Campbell*

Michael Campbell, Commissioner

(Sgd.) *Leonard Gallant*

Leonard Gallant, 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)