



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11011
Order LR11-13**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Sean Larson and Pamela
MacDougall against Order LD11-124 dated
May 24, 2011.

BEFORE THE COMMISSION
on Monday, the 30th day of May, 2011.

Allan Rankin, Vice-Chair
Michael Campbell, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, by Sean Larson and Pamela MacDougall against Order LD11-124 dated May 24, 2011.

Order

INTRODUCTION

On May 25, 2011, the Commission received a Notice of Appeal filed by Sean Larson and Pamela MacDougall (the Appellants). The Appellants appealed Order LD11-124 issued by the Office of the Director of Residential Rental Properties (the Director) on May 24, 2011.

By way of background, on May 5, 2011, Diane McQuaid (the Respondent) filed with the Director *An Application by Lessor for an Order* pursuant to Section 13(3) of the *Rental of Residential Property Act* (the *Act*). In said Application, the Respondent alleges that the Appellants have been persistently and/or habitually late since August 2010.

The matter was initially heard by the Director on May 19, 2011. In Order LD11-124, the Director terminated the rental agreement between the parties as of 12:00 midnight, May 25, 2011 and ordered the Appellants to vacate the residential premises on or before said date and time.

EVIDENCE

The Appellant Pamela MacDougall testified that the Appellants are in the process of moving out of the residential premises and will vacate said premises on May 31, 2011. Ms. MacDougall acknowledged that the Appellants were often late paying the rent but they did ultimately pay. She believed that they had an arrangement with the Respondent for such late payment. She provided the Commission with copies of receipts demonstrating that the rent is paid up to and including April 2011. She noted that the Appellants do intend to pay for the May rent through a combination of the security deposit and a payment of the remaining balance. Ms. MacDougall states that she only received two Form 4 termination notices from the Respondent.

The Respondent states that she had issued and served the Appellants with five Form 4 termination notices. Ms. McQuaid noted that, provided that the Appellants leave the residential premises on May 31, 2011, "there is no issue". If the residential premises are in good condition, the security deposit can be applied to the rent owing for May 2011, leaving a balance owing of \$275.00. The Respondent emphasized that there was no agreement for late payment between the parties.

DECISION

The Commission agrees with the Director that the Appellants have been habitually and persistently late in the payment of rent to the Respondent. However, given that the Respondent is now satisfied with a termination date of May 31, 2011, and given the sworn testimony of Ms. MacDougall that the Appellants will vacate said premises on May 31, 2011 and in fact are in the process of moving their belongings out of the residential premises, the Commission hereby orders that the rental agreement between the Respondent [lessor] and the Appellants [lessees] for the residential premises is terminated as of 12:00 midnight on May 31, 2011. The Appellants shall vacate the residential premises on or before 12:00 midnight on May 31, 2011.

In the event that the Appellants fail to comply with this Order, the Respondent may make an application to the Director for an Order that possession of the residential premises be surrendered to the Respondent and directing the sheriff to put the Respondent in possession of the residential premises.

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

IT IS ORDERED THAT

1. The rental agreement between Diane McQuaid [lessor] and Sean Larson and Pamela MacDougall [lessees] for the residential premises is terminated as of 12:00 midnight on May 31, 2011.
2. The aforementioned lessees shall vacate the residential premises located at 24A Maypoint Road in Charlottetown on or before 12:00 midnight on May 31, 2011.

DATED at Charlottetown, Prince Edward Island, this 30th day of May, 2011.

BY THE COMMISSION:

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

(Sgd.) *Michael Campbell*
Michael Campbell, Commissioner

(Sgd.) *Jean Tingley*
Jean Tingley, 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)