



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11007
Order LR11-14**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act (the "Act"), by Michael Roche
against Order LD11-080 of the Director of
Residential Rental Property dated April 7,
2011

BEFORE THE COMMISSION

On Tuesday, the 7th day of June, 2011.

John Broderick, Commissioner
Michael Campbell, Commissioner
Jean Tingley, 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 (the "Act"), by Michael Roche
against Order LD11-080 of the Director of
Residential Rental Property dated April 7,
2011

Order

On April 26, 2011 the Commission received a Notice of Appeal from Michael Roche (the Appellant) requesting an appeal of Order LD11-080 dated April 7, 2011 issued by the Director of Residential Rental Property (the Director).

By way of background, on December 22, 2010 the Appellant filed with the Director a Form 8 - Notice of Intention to Retain Security Deposit. On February 2, 2011, Madeleyne Espana and Simon Galeano (the Respondents) filed with the Director a Form 9 - Application re Determination of Security Deposit.

In Order LD11-080, the Director found that:

"The Residential Rental Property Officer determines that the lessor has failed to fulfill his responsibility under Section 10 (9) of the Act which reads as follows:

- (9) Where the lessee makes an application pursuant to subsection (7), the lessor shall not later than five days after service on him of the application, deliver to the Director the amount of the security deposit and accumulated interest which he has retained and, if he fails to do so, the Director may issue an order directing him to do so within such time as may be specified in the order.*

The lessor has also failed to comply with the directive of the Director of the Office of Residential Rental Property in her letter dated February 4, 2011 wherein she informed him that the security deposit must be forwarded to this Office before 12:00 noon, February 18, 2011.

"IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay \$550.00 to the lessees on or before May 7, 2011."**

The Commission heard this appeal on May 11, 2011. The Appellant was present and Léa Roche appeared as a witness. Ms. Espana was also present and was assisted by an interpreter, Joe Byrne.

The Appellant testified he had received complaints from the neighbours concerning the appearance of the residential premises. He also testified that the grass was left uncut for two to three weeks at a time and that there were various forms of damage caused to the residential premises by the Respondents. In addition, the Appellant contends that the Respondents were wasteful with respect to the heating of the residential premises. The Appellant contends that the ceiling was fine when the premises were first rented to the Respondents.

Ms. Espana advised that the ceiling was damaged when they first moved in to the premises. Ms. Espana contends that the Appellant did not give the required notice when entering the premises.

The Commission denies this appeal. While there are various assertions from the parties as to whether or not the residential premises were in fact damaged during the time that the premises were occupied by the Respondents, the Commission finds that there is no error in the Director's Order. Section 10 of the **Rental of Residential Property Act** sets out a process for a lessor to follow in order to lawfully retain a security deposit. The Appellant failed to follow this statutory process. That could be construed as merely ignorance of the law, but the Appellant then failed to comply with a subsequent directive issued by the Director. A careful review of the evidence leads the Commission to find that the Appellant intended all along to keep the security deposit. The Appellant failed to place the security deposit he received in trust and the Rental Agreement (Exhibit E-13) states:

A NON-REFUNDABLE DAMAGE DEPOSIT OF \$550.00 IS DUE BEFORE PROPERTY IS RENTED TO TENANT, AND IT IS TO BE USED AS A SECURITY DEPOSIT.

The Commission finds that the above use of the term "non-refundable" is contrary to section 10 of the **Rental of Residential Property Act**. Such wording could be viewed as a deliberate attempt to mislead the Respondents.

The Commission hereby confirms Order LD11-080. The Appellant is hereby ordered to pay the sum of \$550.00 to the Respondents forthwith.

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

IT IS ORDERED THAT

1. **The Appellant (lessor) Michael Roche shall pay the sum of \$550.00 to the Respondents (lessees) Madeleyne Espana and Simon Galeano forthwith.**

DATED at Charlottetown, Prince Edward Island, this **7th** day of **June, 2011**.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(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)