



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11010
Order LR11-15**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Witold Pawlowski and
Elizabeth Borczynska against Order LD11-
112 of the Director of Residential Rental
Property dated May 10, 2011

BEFORE THE COMMISSION
on Tuesday, the 7th day of June, 2011.

John Broderick, Commissioner
Michael Campbell, Commissioner
Peter McCloskey, 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 Witold Pawlowski and
Elizabeth Borczynska against Order LD11-
112 of the Director of Residential Rental
Property dated May 10, 2011**

Order

On May 24, 2011 the Commission received a Notice of Appeal from Witold Pawlowski and Elizabeth Borczynska (the Appellants) requesting an appeal of Order LD11-112 issued by the Director of Residential Rental Property (the Director).

By way of background, on March 29, 2011 MacCormack Builders and Apartments (the Respondent) filed with the Director a Form 4 – Notice of Termination by Lessor of Rental Agreement. On April 18, 2011, the Respondent filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

A hearing before the Director took place on April 28, 2011 and Order LD11-112 was issued which states, in part:

“The lessees failed to invalidate the Notice of Termination... The lessees continue to occupy the residential premises as of the date of the hearing.

IT IS THEREFORE ORDERED THAT

1. *The residential premises shall be surrendered to the lessor, and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon on Monday, May 16, 2011.”*

A hearing before the Commission was held on May 31, 2011. The Appellants were present. Terry Larmond appeared on behalf of the Respondent.

Mr. Pawlowski testified that the Appellants had an understanding with the Respondent to pay monthly rent in installments. Most months this amounted to two installments, but some months were paid in three installments. The Appellants worked night shifts and as such, they “muted” the telephone until 2:00 p.m. or 3:00 p.m. The Appellants acknowledge that they fell behind in their rent. The Appellants have been making rent payments every two weeks since that time as they do not like to leave their bills unpaid. Mr. Pawlowski described various problems with the residential premises: water in basement, past furnace problems, windows that needed replacement etc. About two months ago, the Appellants called the Department of Health with respect to concerns about the residential premises. Mr. Pawlowski stated that as long as the Appellants were paying the rent and not complaining, things were fine.

Mr. Larmond testified that he was often refused entry when he was seeking to repair the residential premises on the basis that the Appellants were on night shift.

Mr. Larmond submitted that the rental arrears as of the hearing day (May 31, 2011) was \$710.00. As of June 1, 2011, \$730.00 will be added to the rental arrears and the Appellants will be about two months behind in the rent.

Mr. Larmond told the Commission that, pursuant to a subsequent Order of the Director, Order LD11-127, the Respondent installed one new window on May 28, 2011. The other windows have been ordered and are expected in four to six weeks.

Mr. Larmond stated that the Respondent simply wants the Appellants out of the residential premises.

The Commission finds that the Respondent accepted late and installment rent payments for much of the four years that the Appellants have resided in the residential premises. The Commission requested copies of receipts from both parties and the Appellants appear to be approximately one month behind in their rent. The Appellants have demonstrated good faith in that they continue to make rent payments even after the Respondent set in motion a process to terminate the rental agreement.

The Commission allows the appeal. The Commission hereby reverses Order LD11-112 and orders a conditional continuation of the rental agreement and the occupancy of the Appellants, subject to the following conditions:

- The Appellants shall continue to pay the sum of \$730.00 (subject to any increases allowed under the ***Rental of Residential Property Act***) rent each month. Such payment may be made in whole or in two installments of \$400.00 and \$330.00 per month.
- The Appellants reduce all rental arrears to zero on or before August 31, 2011.

If either of the conditions has not been satisfied, the Respondent is entitled to make a new Form 4 application through the Director. However, to expedite matters, the Respondent may also file a written request for review of the Commission's decision along with evidence pertaining to any alleged breach of the above conditions and the Commission will hear such request for review and may review, rescind or vary this Order pursuant to section 12 of the ***Island Regulatory and Appeals Commission Act***.

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 Commission hereby reverses Order LD11-112 and orders a conditional continuation of the rental agreement and the occupancy of the Appellants, subject to the conditions that follow.

3. The Appellants shall continue to pay the sum of \$730.00 (subject to any increases allowed under the ***Rental of Residential Property Act***) rent each month. Such payment may be made in whole or in two installments of \$400.00 and \$330.00 per month.
4. The Appellants shall reduce all rental arrears to zero on or before August 31, 2011.
5. If any of the above conditions have not been satisfied, the Respondent is entitled to make a new Form 4 application through the Director. However, to expedite matters, the Respondent may, in addition, file a written request for review of the Commission's decision along with evidence pertaining to any alleged breach of the above conditions and the Commission will hear such request for review and may review, rescind or vary this Order pursuant to section 12 of the ***Island Regulatory and Appeals Commission Act***.

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.) Peter McCloskey

Peter McCloskey, 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)