



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11012
Order LR11-16**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Shona Holzer and Matt
Holzer against Order LD11-102 issued by the
Director of Residential Rental Property dated
May 2, 2011

BEFORE THE COMMISSION
On Wednesday, the 8th day of June, 2011.

John Broderick, Commissioner
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 Shona Holzer and Matt
Holzer against Order LD11-102 issued by the
Director of Residential Rental Property dated
May 2, 2011**

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INTRODUCTION

On May 25, 2011 the Commission received a Notice of Appeal filed by Shona Holzer on behalf of Matt Holzer and herself (the Appellants). The Appellants appealed Order LD11-102 issued by the Office of the Director of Residential Rental Property (the Director) on May 2, 2011.

By way of background, on January 14, 2011, Brian Lee Gallant (the Respondent) filed with the Director an Application for Enforcement of Statutory or Other Conditions of Rental Agreement. In said application, the Respondent was seeking: a finding that rent is owed [specifically, a return of rent]; a finding that the security deposit, or part thereof, should be forfeited or returned; and an order that an amount found to be owed be paid.

The matter was heard by the Director on April 6, 2011. In Order LD11-102 the Director found:

- “1. *The lessee’s application with respect to return of rent is hereby dismissed.*
2. *The lessors shall pay the lessee an amount of \$50.00 on or before May 25, 2011.”*

The Commission heard this matter on June 8, 2011. Shona Holzer was present on behalf of the Appellants. The Respondent, Brian Lee Gallant, was not present.

EVIDENCE

Ms. Holzer told the Commission that she personally witnessed a friend of the Respondent smoking in the residential premises.

The Commission finds Ms. Holzer to be a credible witness. The Commission finds that there was notice, inside and outside the residential premises, that smoking was not permitted in the residential premises.

The Commission notes statutory condition 4, contained in section 6 of the ***Rental of Residential Property Act*** which reads:

4. Obligation of the Lessee

The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.

Based on evidence apparently not before the Director, the Commission hereby finds that the Appellants' claim for cleaning, as a result of smoking in a residential premises clearly designated as non-smoking, to be a valid claim. The Commission therefore varies Order LD11-102 by deleting the requirement of the Appellants [lessors] to pay the Respondent [lessee] an amount of \$50.00. Accordingly, the Appellants are entitled to retain the entire \$100.00 security deposit.

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. Order LD11-102 is hereby varied by deleting the requirement of the Appellants [lessors] to pay the Respondent [lessee] an amount of \$50.00.
3. The Appellants are thus entitled to retain the entire \$100.00 security deposit.

DATED at Charlottetown, Prince Edward Island, this **8th** day of **June, 2011**.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(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)