



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11021
Order LR11-23**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Chris Gallant and Christian
Gauthier against Order LD11-311 issued by
the Director of Residential Rental Property
dated August 3, 2011.

BEFORE THE COMMISSION
on Tuesday, the 16th day of August, 2011.

Allan Rankin, Vice-Chair
Michael Campbell, Commissioner
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, by Chris Gallant and Christian Gauthier against Order LD11-311 issued by the Director of Residential Rental Property dated August 3, 2011.

Order

Chris Gallant and Christian Gauthier (the Appellants) have appealed Order LD11-311 issued by the Director of Residential Rental Property on August 3, 2011.

In Order LD11-311, the Director dismissed the Appellants' application to set aside the July 15, 2011 Notice of Termination, found said Notice of Termination to be valid, and ordered the Appellants to vacate the residential premises on or before August 4, 2011.

The appeal was heard by the Commission on August 12, 2011. The Appellants represented themselves at the hearing. Badrul Chishti represented the Respondent, 2791862 Canada Inc.

At the hearing, Mr. Gallant acknowledged that he owed rent in the amount of \$500.00 as part of the June 2011 rent. Mr. Gallant stated that he did not pay this rent money due to the condition of the residential premises. Mr. Gallant stated that he had no previous knowledge of the role of the Director or the Commission with respect to rental matters and thus was unaware of the process to be used in the event of deficiencies in the condition of rental premises.

Mr. Gallant also submitted that a security deposit of \$500.00 had been paid in May 2011. Mr. Gallant stated that he did not tell Mr. Chishti that there were insufficient funds to cash the security deposit cheque.

Mr. Chishti submitted that \$500.00 remains owing towards the June 2011 rent of \$650.00. Mr. Chishti also submitted that he had not cashed the \$500.00 security deposit cheque, post-dated May 25, 2011, as Mr. Gallant called him the morning of May 25, 2011, asked him not to deposit the cheque as there were insufficient funds and promised a cash payment in substitution of the cheque.

The Commission finds that rent in the amount of \$500.00 is owed. The Commission further reiterates past findings in other appeals that a tenant may not withhold rent to motivate a landlord to improve the condition of the residential premises. The ***Rental of Residential Property Act*** provides a process to address alleged deficiencies in the condition of the residential premises. Ignorance of the law is not an excuse.

With respect to the issue of the security deposit, such issue is not directly applicable to the termination of the rental agreement. However, the Commission finds that the Respondent has *prima facie* established that the May 25, 2011 cheque for the security deposit was never cashed. The Commission makes this finding after having viewed both sides of the cheque in question: there was no endorsement or stamp on the reverse of the cheque. Mr. Gallant alleges that somehow funds were electronically transferred from his father's account to the Respondent, or a related company of the Respondent. Mr. Gallant requested an adjournment so his father could file a bank statement to establish that the funds were indeed transferred. The Commission gave the Appellants until noon on August 15, 2011 to file supporting documentation but no such documents were filed by that deadline. The Commission finds that, on a balance of probabilities, the security deposit was never paid.

The Commission finds the evidence of Mr. Chishti to be credible. The Commission finds that the same cannot be said of the Appellants. Indeed, the approach of the Appellants appears to be to present novel arguments that frankly exceed the limits of believability and then, when put to the test, not file documentation in support.

Accordingly, the Commission confirms Order LD11-311. The Commission orders that the Appellants Christopher Gallant and Christian Gauthier shall vacate the residential premises on or before Thursday August 18, 2011 at 12:00 noon.

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

IT IS ORDERED THAT

1. **Order LD11-311 is hereby confirmed.**
2. **The Appellants [lessees] Christopher Gallant and Christian Gauthier shall vacate the residential premises located at 175 St. Peter's Road, Apartment #4, Charlottetown Prince Edward Island on or before Thursday August 18, 2011 at 12:00 noon.**

DATED at Charlottetown, Prince Edward Island, this 16th day of **August**, 2011.

BY THE COMMISSION:

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

(Sgd.) Michael Campbell
Michael Campbell, Commissioner

(Sgd.) Ferne MacPhail
Ferne MacPhail, 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)