



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11022
Order LR11-30**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Mitchell Bruce against Order
LD11-185 issued by the Director of
Residential Rental Property dated August 2,
2011

BEFORE THE COMMISSION
on Thursday, the 29th day of September,
2011.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Peter McCloskey, 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 Mitchell Bruce against Order
LD11-185 issued by the Director of
Residential Rental Property dated August 2,
2011**

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BACKGROUND

On August 5, 2011, the Commission received a Notice of Appeal filed by Mitchell Bruce (the Appellant). The Appellant appealed Order LD11-185 issued by the Office of the Director of Residential Rental Property (the Director) on August 2, 2011.

By way of background, on May 12, 2011 the Appellant filed with the Director a Form 9 – Application re Determination of Security Deposit, together with a Form 8 – Notice of Intention to Retain Security Deposit signed by Lili Anne Webster (the Respondent).

The matter was initially heard by the Director on July 19, 2011. In Order LD11-185 the Director ordered that payment in the amount of \$353.50 be made to the Respondent.

The Commission heard this matter on August 29, 2011. Both the Appellant and Respondent were present at the hearing.

EVIDENCE

The Appellant told the Commission that there were “issues” with the closing mechanism of the screen door. He also advised that he was not the only person to use that door. The door was destroyed by wind in September 2010 and yet he was not informed that he would be responsible for the cost of replacing the door until May 2011.

The Respondent told the Commission that the door worked fine. She referred to Exhibit E-9 and noted that Paul Butler, who has done maintenance work on the residential property, confirmed in his July 16, 2011 letter that the door did work properly. She testified that on two occasions she asked the Appellant to close the screen door properly. She noted that her family occasionally used the door as a back door and the door always worked properly.

DECISION

The Respondent seeks to retain the security deposit, plus interest, totalling \$353.50 on the basis that the screen door for the residential rental property was destroyed beyond repair. The Respondent contends that the Appellant was responsible for the destruction of the door in that he failed to properly latch the door. In Order LD11-185, the Director allowed this claim.

Upon a review of the evidence, the Commission takes note that the Appellant was not the only person to use this door. While the Appellant was, in all likelihood, the primary user of the door, the same door served as the back door for the Respondent's home. Therefore, it cannot be said with certainty that it was the actions of the Appellant that directly caused, or contributed to, the destruction of the door.

The Commission also notes that the Appellant was not advised that he would be held responsible for the destroyed door until many months after the door was destroyed.

Further, the evidence before the Commission indicates that the screen door in question had to be pulled closed in order to close securely. The Commission takes official notice that wind is no stranger to Prince Edward Island. The Commission also takes official notice that screen doors frequently have door closing mechanisms and such 'door closers' are usually adjustable. The Commission also takes official notice that the door strikes for screen doors are normally adjustable, and one of the photographs contained in Exhibit E-8 shows such an adjustable door strike.

The Commission finds that a door closer and door strike should be properly adjusted to ensure that the door closed itself. A tenant should not have to deliberately pull the screen door shut to click against the door strike before closing the main door. A properly adjusted door closer should do that. The Respondent was aware that the door was not closing by itself and Mr. Butler was also aware of this problem. In the view of the Commission, the door was not properly adjusted. The responsibility to ensure that the door would securely close by itself rests with the landlord, not the tenant and therefore the Respondent must bear the financial responsibility of the loss of the door.

Accordingly, the Commission allows the appeal and reverses Order LD11-185. The Commission orders that the sum of \$353.50, representing the security deposit plus interest, be returned to the Appellant.

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 and Order LD11-185 is hereby reversed.
2. The sum of \$353.50, representing the security deposit plus interest, shall be forthwith returned to the Appellant.

DATED at Charlottetown, Prince Edward Island, this **29th** day of
September, 2011.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, 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)