



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11030
Order LR12-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential Rental
Property, by Bevan Enterprises Inc. against
Order LD11-281 issued by the Director of
Residential Rental Property dated November
4, 2011

BEFORE THE COMMISSION
on Thursday, the 1st day of March, 2012.

John Broderick, Commissioner
Peter McCloskey, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Dawn Murphy

Acting Commission Administrator
Land, Corporate and Appellate Services Division

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BACKGROUND

On November 10, 2011 the Commission received a Notice of Appeal filed by Weymouth Property on behalf of Bevan Enterprises Inc. (the Appellant). The Appellant appealed Order LD11-281 issued by the Director of Residential Rental Property (the Director) on November 4, 2011.

By way of background, the Appellant filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated June 10, 2011 seeking a remedy by way of “an order that an amount found to be owed be paid”

The matter was initially heard by the Director on September 14, 2011. In Order LD11-281 the Director found:

“IT IS THEREFORE ORDERED THAT

1. The application is dismissed.”

The Commission heard this appeal on November 25, 2011. The Appellant was represented by Wayne Bevan and Betty Morrison. Christopher Rayner and Adrienne Kotyk (the Respondents) were also present. The Director of Residential Rental Property, Catherine Flanagan, made a brief presentation on the jurisdictional aspects raised by this matter.

EVIDENCE

The Director of Residential Rental Property gave an oral submission with respect to jurisdiction. Specifically, the Director submitted that she believed that she had jurisdiction under section 8, clauses (d.2) and (f) to make an order where the evidence supported a breach of a statutory obligation and where the claimed amount could be easily quantified. The Director explained that in Order LD11-281 she did not award a claim as she had determined that there was no breach of a statutory condition in this matter.

Mr. Bevan submitted that there was doubt as to the cause of the problem at the residential premises. He submitted that neither the Appellant nor the Respondent was at fault and the problem likely arose innocently. He expressed concern that the Director might be implying that the Appellants were at fault. He submitted that perhaps it would be fairest to apportion the cost of dealing with the problem on a "50/50 split" between the parties.

Mr. Rayner submitted that the Respondents would have to be found negligent or to have willfully caused the problem in order to be held responsible for the cost of correcting the problem.

Section 6.4 of the **Rental of Residential Property Act (the Act)** reads as follows:

6.4 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.

Emphasis added.

The Commission finds that there is no evidence to suggest that either the Appellant or the Respondents were negligent or willfully caused the problem. The Commission finds that it is the responsibility of the lessor, in this case the Appellant, to bear the cost of correcting the problem pursuant to section 6.1 which reads as follows:

6.1 Condition of Premises

The lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.

For the above reasons, and given the facts of this particular appeal, this appeal is denied and Order LD11-281 is hereby confirmed in its entirety.

However, the subject matter of this appeal has raised a broader question as to whether the Director has the jurisdiction to hear and decide a claim for damages other than in the context of the determination of a security deposit. What if there had been a willful or negligent act of a lessee – could a lessor make a claim for damages under the provisions of section 8 during an ongoing tenancy?

Clause 1(o) of the **Act** reads as follows:

1. (o) "rental agreement" or "agreement" means an agreement, whether written or oral, express or implied, whereby a lessor confers upon a lessee the right to occupy residential premises;

Section 2 of the **Act** sets out the scope of the **Act**:

2. This Act applies to rental agreements existing on the effective date or entered into or renewed on or after that date, notwithstanding any agreement, waiver or statement to the contrary. 1988,c.58,s.2; 2008,c.20,s.82.

The **Act** applies broadly to the rental of residential premises in Prince Edward Island. This broad application is apparent when section 2 of the **Act** is read together with the definition of “rental agreement” contained in section 1 of the **Act**. The legislation extends to any agreement: written, verbal, express, or implied, whereby the right to occupy residential premises is conferred by a lessor to a lessee.

Subsection 4(2) of the **Act** sets out the functions of the Director:

4(2) In addition to the functions hereinafter specifically set out, the functions of the Director include:

(a) providing information to the public to promote understanding of rights and responsibilities under this Act;

(b) advising lessors and lessees with respect to matters relating to rental agreements;

(c) receiving and investigating allegations of violations of rental agreements, or of this Act or the regulations;

(d) holding hearings, giving notice thereof to the parties, determining matters of procedure at hearings and making decisions or orders with respect to matters relating to the rights of lessors or lessees arising pursuant to this Act or otherwise;

(e) entering and inspecting residential premises, after serving an inspection order, for the purpose of carrying out his powers or duties under this Act or the regulations.

It is noteworthy that the functions of the Director, as set forth in section 4(2) of the **Act**, include “...making decisions or orders with respect to matters relating to the rights of lessors or lessees pursuant to this **Act** or otherwise.” This generous grant of authority by the Legislature seems to suggest that the **Act** was intended to establish an effective and comprehensive mechanism for determining leasehold rights and remedying tenancy disputes.

Section 9 of the **Interpretation Act**, R.S.P.E.I. 1988, c. I-8 reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Section 8 of the **Act** describes the legal boundaries of the authority given to the Director to enforce conditions and covenants (statutory and otherwise) found in a rental agreement:

8. Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the Director shall investigate the matter and may

(a) inspect the residential premises or have them inspected by an appropriate authority;

(b) prohibit the discontinuance of any services;

(c) authorize the discontinuance of any service and make an appropriate adjustment to the rent;

(d) authorize the subletting or assigning of the rental agreement;

(d.1) make a finding that an amount of rent is owed or that a security deposit, or part thereof, should be forfeited or returned;

(d.2) order that an amount found to be owed be paid;

(d.3) order that possession of the residential premises be surrendered to the lessor and directing the sheriff to put the lessor in possession;

(e) authorize the termination of the rental agreement in accordance with section 11;

(e.1) make an order respecting the disposal of abandoned or apparently abandoned personal property including the appropriate disposition of any proceeds realized from an authorized sale; or

(f) make such other decision or order as he considers necessary to ensure compliance with, or to remedy a violation of, this Act or the rental agreement

Emphasis added.

Section 8(d.2) of the **Act**, by its plain and ordinary meaning, authorizes the Director to order a lessor or lessee to pay an amount that the Director finds to be owed. Amounts may be owed as a result of various findings made by the Director, including an adjustment to the rent (section 8(c)), a finding that rent is owing (section 8(d.1)), and a finding that a security deposit should be forfeited or returned (section 8(d.1)). However, amounts may also be owed as a result of a violation of the **Act** or a rental agreement (section 8(f)). While section 8(f) of the **Act** is likely sufficiently broad on its own to authorize the Director to order payment of an amount owed as a result of such a violation, section 8(d.2) provides additional support for the position that the Director has authority to order payment of any amounts found to be owing to a lessor or lessee because of a breach.

In *Prince Edward Island (Director of Residential Property) v. Allen* (1989), 80 Nfld. & P.E.I.R. 19, 249 A.P.R. 19 (P.E.I.S.C.T.D.) (*Allen*), McQuaid J. stated at paragraphs 11 and 12:

11 *The Act is extremely broad in scope. In general terms, it empowers the director to arbitrate matters of contention which, from time to time, inevitably arise between landlord and tenant and to make final and binding rulings therein, subject, of course, to appeal to the Court. It thereby provides for what is intended to be a speedy and expeditious mechanism for relief of an aggrieved party to a lease agreement. Because the director possesses, under the Act, no statutory enforcement powers, he may call upon the Court to require the defaulting party to comply with the order of the director. This the Court may do by the issue of a mandatory injunction or order of prohibition. Disregard of the court order in that regard may well bring about the censure of the Court, often taking the form of a period of incarceration.*

12 *But the Act, in its specific wording, goes beyond the resolution of the normal landlord-tenant differences. It touches, inter alia, upon the failure of a lessee to comply with any covenant of a rental agreement, including the covenant on the part of the lessee to pay rent.*

In *Allen*, Justice McQuaid specifically notes two roles for the Court under the **Act**. First, there is a right of appeal to the Court. Second, the Court, at the request of the Director, provides judicial enforcement powers to ensure compliance with an order of the Director.

However, it is noteworthy that the **Act** does not appear to specifically limit the power and scope of the Director's authority. It neither provides a limit to the Director's monetary jurisdiction, nor does it direct that certain types of claims pertaining to a rental agreement be heard by the Court.

In the Commission's view, the authority of the Director to order monetary remedies is not limited to taking recourse against security deposits. Lessors and lessees may be ordered to pay amounts where a breach or violation has been found by the Director. Section 8 of the **Act** vests the Director with the authority to make any order that he or she feels is necessary to remedy a violation of the **Act** or a rental agreement. Section 10 of the **Act**, on the other hand, is limited to recourse against a security deposit and confined to a breach of statutory condition 4 or an outstanding amount of rent. Section 8 is not so limited. It authorizes a "remedy" for the breach of "any ... condition or covenant" and is not restricted to statutory condition 4 only.

Section 8(f) of the **Act** is worded broadly and there is no principled basis for not interpreting it in a way that gives meaningful content to the **Act** while, at the same time, respecting the language chosen by the Legislature. When the **Act** or a rental agreement imposes an obligation upon a lessor or lessee, there must be available a meaningful remedy for its breach. Limiting monetary relief to circumstances where recourse may be taken against a security deposit would, in the Commission's view, seriously limit the intended scope of the **Act** and frustrate the authority of the Director.

It has been said that a right without a remedy is really no right at all. However, it is equally important to recognize that there can be no remedy without a mechanism for imposing it. In the context of the landlord and tenant relationship, that mechanism ought to be efficient and pragmatic.

The Commission is of the view that the **Act** confers upon the Director the responsibility of providing efficient, pragmatic and 'user friendly' adjudication of landlord and tenant concerns set out in the **Act**. Subject to the rights of appeal to the Commission and the Court, and the Court's valuable role to enforce the decisions of the Director and the Commission, it is solely the Director who is the tribunal entrusted with the statutory dynamics of the landlord / tenant relationship.

That said, it is also the view of the Commission that the type of damages which may be awarded by the Director under the **Act** should be restricted to pecuniary damages which can be readily determined by objective evidence, for example, receipts, estimates, etc. Non-pecuniary damages (for example damages for pain, suffering and loss of enjoyment of life) and pecuniary damages which cannot be so readily determined are often associated with the law of negligence and other such areas of the law that fall within the jurisdiction and expertise of the Court.

In summary, section 8 of the **Act** is broader in scope than section 10, which deals only with security deposits. However, while broad in scope, the Commission finds that the remedial authority conferred upon the Director by section 8 of the **Act** is premised upon a violation; that is, a lessor or lessee must fail to comply with the **Act** or some term of a rental agreement before a remedy is ordered by the Director. A breach is, in essence, a condition precedent to the actions listed in sections 8(a) through 8(f) of the **Act**.

In the present appeal, both the Director and the Commission found that there was no breach and therefore no remedy was ordered. Accordingly, this appeal is denied and Order LD11-281 is hereby confirmed in its entirety.

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 denied.
2. Order LD11-281 is hereby confirmed in its entirety.

DATED at Charlottetown, Prince Edward Island, this **1st** day of **March**, **2012**.

BY THE COMMISSION:

John Broderick, Commissioner

Peter McCloskey, Commissioner

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)