



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12002
Order LR12-08**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Trent Cousins against Order
LD12-017 of the Director of Residential
Rental Property, dated January 17, 2012

BEFORE THE COMMISSION
on Thursday, the 8th day of March, 2012.

John Broderick, Commissioner
Peter McCloskey, Commissioner
Jean Tingley, 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 Trent Cousins against Order
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BACKGROUND

On January 25, 2012 the Commission received a Notice of Appeal dated January 18, 2012 from Trent Cousins (the Appellant) requesting an appeal of Order LD12-017 dated January 17, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on August 15, 2011 Lisa Livingston (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

The matter was heard by the Director on November 18, 2011. Order LD12-017 states, in part:

“IT IS THEREFORE ORDERED THAT

1. *The lessor shall pay to the lessee an amount of \$353.66 on or before January 31, 2012.”*

The Commission heard this appeal on February 13, 2012. The Appellant was present at the hearing along with Pete Doucette, who testified on behalf of the Appellant. The Respondent participated in the hearing via speakerphone along with Richard Arsenault, who testified on the Respondent's behalf via speakerphone.

EVIDENCE

The Appellant testified that he took ownership of the rental property in question on September 30, 2011. He had been credited with two security deposits for tenants other than the Respondent. He filed a copy of the statement of adjustments as Exhibit E-9. He stated that he did not own the property when the lease ended. He also stated that he first learned of the situation when he received a copy of Director's Order LD12-017.

Mr. Doucette testified that he was the property manager under the former owner and he remains the property manager under the Appellant. Mr. Doucette testified that he was not the property manager when the Respondent first moved into the apartment. The former owner held the Respondent's security deposit. Mr. Doucette testified that he didn't know why he did not answer the Respondent's email inquiry.

The Respondent testified that when she moved into the apartment it was in “rough shape”. She stated that she left it in better condition than when she moved in. Mr. Arsenault testified that he helped the Respondent move in to the apartment and helped her to clean it as well.

Three exhibits were filed at the hearing before the Commission:

Exhibit E-9 Statement of Adjustments
Exhibit E-10 Absolute Bill of Sale
Exhibit E-11 Property Management Agreement

Apparently, the Director did not have these documents when she issued Order LD12-017.

The Commission denies this appeal and confirms the Director’s Order LD12-017 for the reasons that follow.

Subsection 10.(5) of the **Rental of Residential Property Act** (the **Act**) reads as follows:

10.(5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation. 1998,c.100,s.2.

Subsection 10.(12) of the **Act** reads as follows:

10.(12) A person who acquires the interest of a lessor in residential premises, whether by purchase, mortgage sale or otherwise, has the rights and is subject to the obligations of the previous lessor with respect to a security deposit paid to the previous lessor. 1988,c.58,s.10; 1990,c.53,s.3; 1998,c.100,s.2.

In the present matter, the Respondent gave up possession of the apartment on July 31, 2011. On August 15, 2011, the Respondent filed a Form 2 with the Director seeking a return of the security deposit. On August 18, 2011, the Director sent a letter concerning the security deposit to Mr. Doucette, who at that time served as the representative for the former owner of the residential premises. A second letter (undated) was sent from the Director to Mr. Doucette (apparently mailed on October 19, 2011). Exhibit E-11 reveals that Mr. Doucette’s firm, East Coast Property Management, was retained as the Appellant’s “agent” to “rent, lease, operate and manage” effective October 17, 2011. The record reveals that Mr. Doucette did not reply to either letter.

The Commission finds that both the previous owner and the Appellant were, through their property manager, given a reasonable period of time to serve the Respondent with a Form 8 Notice of Intention to Retain Security Deposit; however no such document was served. Accordingly, both the former owner and the Appellant failed to comply with the requirements of subsection 10(5) of the **Act**.

The Commission finds that the Appellant was left unaware of the security deposit situation by both the previous owner and Mr. Doucette. The Commission is sympathetic to the situation that the Appellant has found himself in. However, subsection 10.(12) of the **Act** passes both the rights and the obligations, with respect to a security deposit, from the previous owner to the new owner. The obligation to return the Respondent's security deposit now rests on the Appellant.

For these reasons, the Commission hereby confirms Director's Order LD12-017 in its entirety and the Commission orders that the Appellant pay the Respondent the sum of \$353.66 forthwith (immediately, without delay).

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. **Director's Order LD12-017 is hereby confirmed in its entirety.**
3. **The Appellant Trent Cousins shall pay the Respondent Lisa Livingston the sum of \$353.66 forthwith.**

DATED at Charlottetown, Prince Edward Island, this **8th** 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)