



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12011
Order LR12-15**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Heng Zhao and Lihua Xia
against Order LD12-120 dated May 14, 2012
issued by the Director of Residential Rental
Property

BEFORE THE COMMISSION
on Friday, the 13th day of July, 2012.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

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Section 25 of the Rental of Residential
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BACKGROUND

On May 23, 2012 the Commission received a Notice of Appeal dated the same date from Heng Zhao on behalf of himself and Lihua Xia (the Appellants) requesting an appeal of Order LD12-120 dated May 14, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on October 24, 2011 Mr. Zhao filed with the Director a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit dated September 10, 2011 signed by G. Gallant on behalf of West Emerald Enterprises Ltd. (the Respondent).

The matter was heard by the Director on February 16 and 23, 2012. In Order LD12-120 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The Lessor shall receive a payment of \$165.00.*
- 2. Payment to the lessor shall be made after the appropriate appeal period expires.”*

The appeal was heard by the Commission on June 14, 2012. The Appellant Heng Zhao was present and he was assisted by Jie Hu. The Respondent was represented by Paul Gallant. The Respondent called Chris Wilson as a witness.

EVIDENCE

Ms. Hu stated that the February 21, 2012 email from Chris Wilson was not true. The Appellants question why the Respondent took so long to pursue this matter. The Appellants pointed out a date error in the Form 8. The Appellants offered the theory that perhaps the photos were of another unit. The Appellants state that the landlord did not complain about the cleanliness of the unit when they returned the key.

Mr. Gallant stated that the toilet, fridge and walls of the unit were dirty. The new tenant, Mr. Wilson, would not take possession until the unit was cleaned. Mr. Gallant stated that he gave the Appellants "a break" on the cleaning bill. Mr. Gallant explained that the delay was to get "something" [evidence] for the hearing.

Mr. Wilson stated that when he was about to move in the unit was not up to standards. Mr. Gallant and the cleaner were cleaning the unit as he moved in. Mr. Wilson acknowledged that Mr. Gallant asked him to write the email.

DECISION

The Commission finds that the photographs filed by the Respondent establish, on the civil standard of a balance of probabilities, that the unit was not up to a reasonable standard of cleanliness when the Appellants moved out of the unit. The Commission also notes the evidence of Mr. Wilson, as to the lack of cleanliness of the unit when he was moving in and that while he was moving in Mr. Gallant and a cleaner were still cleaning the unit. While the Appellants offered a theory that the pictures were of another unit, the Appellants did not produce any objective evidence to support this theory.

Accordingly, the Commission denies the appeal and confirms Director's Order LD12-120 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 LD12-120 issued by the Director on May 14, 2012 is hereby confirmed in its entirety.

DATED at Charlottetown, Prince Edward Island, this **13th** day of **July**, **2012**.

BY THE COMMISSION:

John Broderick, Commissioner

Ferne MacPhail, Commissioner

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)