



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12016
Order LR12-19**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by KEM Holdings Inc. against
Order LD12-183 dated July 19, 2012 issued
by the Director of Residential Rental
Property

BEFORE THE COMMISSION
on Thursday, the 13th day of September,
2012.

Allan Rankin, Vice-Chair
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 KEM Holdings Inc. against
Order LD12-183 dated July 19, 2012 issued
by the Director of Residential Rental
Property

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BACKGROUND

On August 3, 2012 the Commission received a Notice of Appeal dated the same date from KEM Holdings Inc. (the Appellant) requesting an appeal of Order LD12-183 dated July 19, 2012 issued by the Director of Residential Rental Property.

By way of background, on May 14, 2012 Edward Menzie, on behalf of the Appellant, 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 July 16, 2012. In Order LD12-183 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessees shall pay the lessor the sum of \$2,610.83 on or before August 19, 2012.”*

The appeal was heard by the Commission on August 27, 2012. Edward Menzie (Mr. Menzie) appeared on behalf of the Appellant. Michel Bergeron appeared as a witness for the Appellant. Jeremy and Nora Stevens (the Respondents) were not present.

EVIDENCE

Mr. Menzie told the Commission that the Director “fabricated” an issue by presuming that there had been an unlawful rent increase. In fact, the tenants were, by their own request, moved from a three bedroom unit to a four bedroom unit. The tenants then signed a new rental agreement for the larger unit with accordingly higher rent. This new rental agreement was on file with the Director and a review of that document ought to have made it apparent that the address had changed.

DECISION

The Commission hereby allows the appeal and amends Director’s Order LD12-183 as follows:

1. The lessees shall pay the lessor the sum of \$3034.83 on or before August 19, 2012.

The Commission finds that the increase in rent from \$830.00 per month to \$900.00 per month was justified by the fact that the Respondents had requested a larger unit and the Appellant had fulfilled that request. The Director apparently overlooked the different address of the new unit noted on the October 1, 2011 rental agreement and presumed that an illegal rent increase had occurred.

The Commission finds that the Director did not deliberately “fabricate” an issue; rather she overlooked some key information but otherwise acted in good faith.

However, the Commission finds that the Director’s presumption was unfair because she did not give the Appellant an opportunity to respond to the allegation of an illegal rental increase before issuing Order LD12-183. In fact, the increase was legal and the Director would have become aware of that fact had she raised the issue first with the Appellant and provided the Appellant with an opportunity to respond.

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, the Commission finds that the Appellant [lessor] did NOT illegally increase rent and Director’s Order LD12-183 is hereby amended to read:**

1. ***The lessees shall pay the lessor the sum of \$3034.83 on or before August 19, 2012.***

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

BY THE COMMISSION:

(sgd. Allan Rankin)

Allan Rankin, Vice-Chair

(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)