



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12027
Order LR12-33**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Matthew Thomson against
Order LD12-262 dated October 3, 2012 issued
by the Director of Residential Rental
Property.

BEFORE THE COMMISSION

on Wednesday, the 12th day of December,
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

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, by Matthew Thomson against Order LD12-262 dated October 3, 2012 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On October 5, 2012 the Commission received a Notice of Appeal dated the same date signed by a lessee, Matthew Thomson (the Appellant) requesting an appeal of Order LD12-262 dated October 3, 2012 issued by the Director of Residential Rental Property (the Director).

By way of background, on September 11, 2012 a lessor, Ed Keunecke (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated the same date, to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 21, 2012.

The matter was heard by the Director on September 20, 2012 and in Order LD12-262 the Director ordered

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon on Friday, October 5, 2012.”*

The appeal was heard by the Commission on October 19, 2012. The Appellant was present. Mieke Keunecke represented the Respondent and participated by speakerphone.

Following the hearing, additional written submissions were received from the Appellant and the Respondent.

EVIDENCE

The Appellant maintained that his rent is payable on the 15th day of each month. He stated that he has been living in the apartment since July 2010. He noted that he always pays his rent on the 15th of the month, but it could be later if the bank was not open and on one occasion he was seven or eight days late.

The Respondent told the Commission that the Appellant moved in to the apartment in the summer of 2010. He had moved in on the 14th of the month, so the parties agreed that rent would be payable on the 15th of the month. In October 2010 the parties agreed to change the rent payment to the first of each month.

DECISION

The Commission denies the appeal and confirms Director's Order LD12-262 in its entirety.

Exhibit E-16 is a copy of a receipt dated July 15, 2010. It establishes that on July 15, 2010 a total of \$900.00 was paid on the Appellant's behalf, consisting of \$700.00 cash and a \$200.00 cheque. The funds were for the first month's rent and the security deposit. Rent was stated as \$450.00 per month for July 15th to August 15th.

Exhibit E-17 is a copy of a receipt dated October 14, 2010. The receipt is for \$675.00. On the receipt it is noted that the rent is for September 13th to 30th and for the month of October 2010. A notation reads "due again Nov. 1st rent".

The Commission finds, on the civil standard of a balance of probabilities, that Exhibit E-17 explains what actually happened with respect to the timing of rent payments. Based on Exhibit E-17, the Commission finds the following: the Appellant had fallen behind in his rent in the autumn of 2010, he then paid \$675.00 which amounts to one and one half month's rent (based on the rent payable in 2010), and the parties agreed to rent payments being due on the first of the month on a go forward basis. On this basis, the Commission finds that from November 1st 2010 forward, the rent was due on the 1st day of each month.

The Commission finds that the Appellant has been in arrears for an extended period of time with respect to the payment of rent. The Commission notes that the presence of a security deposit does not serve to negate the Appellant's arrears.

Accordingly, the appeal is denied and Order LD12-262 is 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. **Director's Order LD12-262 is hereby confirmed in its entirety.**

DATED at Charlottetown, Prince Edward Island, this **12th** day of **December, 2012.**

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)