



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR13016
Order LR13-13**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by John and Sharon Kfoury
against Order LD13-237 dated August 7,
2013 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Thursday, the 12th day of September,
2013.

John Broderick, Acting Vice-Chair
Ferne MacPhail, 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 filed under Section 25 of the Rental of Residential Property Act by John and Sharon Kfoury against Order LD13-237 dated August 7, 2013 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 28, 2013 the Commission received a Notice of Appeal dated the same date from two lessees, John Kfoury and Sharon Kfoury (the Appellants) requesting an appeal of Order LD13-237 dated August 7, 2013 issued by the Director of Residential Rental Property (the Director).

By way of background, on April 8 2013 a lessor, Philip McCaughey (the Respondent), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated April 2, 2013.

The matter was heard by the Director on July 9, 2013. In Order LD13-237 it states that:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees shall pay to the lessor the sum of \$5,607.77 on or before September 6, 2013.”*

The matter was heard before the Commission on September 6, 2013. The Appellants were present. The Respondent was also present.

EVIDENCE

The Appellants told the Commission that the residential premises had various deficiencies and was very expensive to heat. They presented Exhibit E-9, a heating oil account statement, to support their position. The Appellants testified that they had an agreement with the Respondent to reduce the rent to \$600.00 per month. The Appellants submit that they only owe three or four months' rent.

The Respondent testified that the conditions at the residential premises were better than suggested by the Appellants. Things that required repair were fixed. The Respondent acknowledged that some windows did need to be replaced but he was unable to replace them as the Appellants were in arrears of rent. The Respondent testified that he had agreed to accept payments of \$600.00 but did not agree to reduce the rent and accordingly, for those months that the Appellants paid \$600.00 the arrears increased by \$175.00 each month. The Respondent told the Commission that he had given a slip of paper noting the outstanding arrears to John Kfoury on these occasions.

DECISION

The Commission denies the appeal and agrees with the decision of the Director for the reasons that follow.

Exhibit E-2 establishes that the agreed monthly rent was \$775.00. There is no documentation before the Commission to establish that the parties later agreed to a reduced monthly rent. Where it is alleged that an agreement was made to reduce monthly rent, the onus rests on the party seeking to establish the rent reduction to demonstrate, on the civil standard of a balance of probabilities: (i) that the other party had in fact agreed to reduce the monthly rent, (ii) the agreed new monthly rent and (iii) the date of such agreement for a reduced monthly rent. In the present appeal, the Commission finds that the Appellants have not satisfied the onus to demonstrate an agreed reduction of rent.

While the Appellants presented a heating oil account statement showing a large account balance, this does not, by itself, support a finding that the residential premises were unusually expensive to heat. Further, a lessee is not entitled to withhold rent for alleged deficiencies. In a situation where a lessor appears to have failed to respond to an alleged breach of a statutory condition, the appropriate action for a lessee is to contact the Office of the Director to file a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement, pursuant to section 8 of the *Rental of Residential Property Act*. There is no evidence before the Commission to support a finding that the Appellants had filed such a Form 2 application with respect to the residential premises germane to this appeal.

The Commission therefore finds that there is no objective evidence before the Commission to justify varying the amount of rental arrears calculated in Director's Order LD13-237.

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. The Appellants John Kfoury and Sharon Kfoury shall pay to the Respondent Philip McCaughey the sum of \$5,607.77, said sum to be paid in full on or before October 4, 2013.

DATED at Charlottetown, Prince Edward Island, this 12th day of
September, 2013.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Acting Vice-Chair

(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

(sgd. Jean Tingley)

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)