



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR13015
Order LR13-18**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act by Ed Keunecke against Order
LD13-226 dated July 29, 2013 issued by the
Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 16th day of October,
2013.

John Broderick, Acting Vice-Chair
Leonard Gallant, Commissioner
Ferne MacPhail, 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 Ed Keunecke against Order LD13-226 dated July 29, 2013 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 20, 2013 the Commission received a Notice of Appeal dated August 19, 2013 from a lessor, Ed Keunecke (the Appellant) requesting an appeal of Order LD13-226 dated July 29, 2013 issued by the Director of Residential Rental Property (the Director).

By way of background, on January 4, 2013 a lessee, Patty Everson (the Respondent), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated January 4, 2013. A copy of the said Form 2 was forwarded to the Appellant by the Director on January 9, 2013. On January 15, 2013 the Director received from the Appellant a completed Form 8 – Notice of Intention to Retain Security Deposit together with security deposit funds in the amount of \$315.00.

The matter was heard by the Director on June 18, 2013. In Order LD13-226 it states that:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor is entitled to retain the sum of \$67.00 from the security deposit and the lessee is entitled to the balance of the security deposit plus interest in the amount of \$602.39 payable as follows.*
- 2. The lessee shall receive the security deposit funds of \$315.00 currently held in trust upon expiry of the relevant appeal period.*
- 3. The lessor shall pay the sum of \$287.39 on or before August 29, 2013.”*

The matter was heard before the Commission on September 23, 2013. Both the Appellant and the Respondent were present. Peggy MacDonald testified on behalf of the Appellant.

EVIDENCE

The Appellant presented additional evidence in three parts. In the first part, he presented evidence to support his assertion that the apartment was extensively remodeled. This included invoices for labour and materials, particularly for the bathroom and kitchen. In the second part, the Appellant presented evidence of the condition of the apartment after the Respondent had moved out. This included colour photographs of the inside of the apartment. In the third part, the Appellant presented evidence of invoices for materials and labour to repair various kinds of described damage which occurred during the Respondent's tenancy.

Peggy MacDonald testified that she had dusted the apartment and cleaned the fridge before the Respondent had moved in. Ms. MacDonald had also shown the apartment to prospective tenants. Ms. MacDonald noted that there was no stove in the apartment when she was there and she observed that the floors were clean and the walls were freshly painted.

The Respondent acknowledged that the bathroom had been completely renovated and that new cabinets and countertop had been installed in the kitchen. She disputed the Appellant's assertion that the kitchen stove was new. The Respondent acknowledged that she did not clean the fridge and stove before she moved out.

DECISION

The Commission allows the appeal in part and varies the terms of the Director's Order for the reasons that follow.

The evidence before the Commission supports a finding that the Appellant had very extensively remodelled the bathroom just prior to the commencement of the rental agreement with the Respondent. The Appellant has filed many receipts demonstrating that substantial funds were spent essentially creating a new bathroom. In addition, renovations were done to the kitchen which included a new countertop, plumbing and cabinetry.

The Commission agrees with the Director that the total security deposit, with interest, is \$669.39. However, the Commission notes that the Appellant only paid \$315.00 of the security deposit in trust to the Director.

The Commission finds that the Respondent failed to adequately clean the fridge and stove. The Commission finds that a fixed sum of \$100.00 is to be retained from the security deposit for the cleaning of the fridge and stove.

The Commission finds that the Respondent's dogs did damage a window in the apartment. The Commission finds that a fixed sum of \$50.00 is to be retained from the security deposit for repair and repainting of the window frame.

The Commission agrees with the Director's assessment in the amount of \$41.00 for the repair of the broken window pane.

The Commission agrees with the Director that the damage to the window screen on a separate window is an invalid claim.

The Commission finds that the Respondent removed the smoke detector and finds that a fixed sum of \$35.00 is to be retained from the security deposit to replace the missing smoke detector.

The Commission finds that some paint damage was caused by the Respondent and the Commission finds that a fixed sum of \$75.00 is to be retained from the security deposit for touch-up of paint in the apartment.

Accordingly, the Commission finds that the Appellant is entitled to retain \$301.00 from the security deposit for damages. The Respondent is entitled to receive the remainder of the security deposit, that is to say the sum of \$368.39.

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 in part.
2. The Appellant (lessor) is entitled to retain the sum of \$301.00 from the security deposit and the Respondent (lessee) is entitled to the balance of the security deposit plus interest in the amount of \$368.39 payable as follows.
3. The Respondent (lessee) shall receive the security deposit funds of \$315.00 currently held in trust upon expiry of the appeal period set out in subsection 26(2) of the *Rental of Residential Property Act*.
4. The Appellant (lessor) shall pay the sum of \$53.39 to the Respondent (lessee) on or before November 1, 2013.

DATED at Charlottetown, Prince Edward Island, this 16th day of **October**, 2013.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Acting Vice-Chair

(sgd. Leonard Gallant)

Leonard Gallant, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)