



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR13022
Order LR14-04**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Ed Keunecke against
Orders LD13-322 and LD13-323 dated
October 17, 2013 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Tuesday, the 4th day of February, 2014.

John Broderick, Acting Vice-Chair
Peter McCloskey, 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 under Section 25 of the Rental of Residential Property Act, by Ed Keunecke against Orders LD13-322 and LD13-323 dated October 17, 2013 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On November 1, 2013 the Commission received a Notice of Appeal dated October 27, 2013 from a lessor, Ed Keunecke (the Appellant) requesting an appeal of Orders LD13-322 (Docket No. 13-138) and LD13-323 (Docket No. 13-178) both dated October 17, 2013 and issued by the Director of Residential Rental Property (the Director).

Docket No. 13-138

On January 23, 2013 a lessee, Adam Anderson (the Respondent), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated January 23, 2013 alleging that Statutory Condition 6.1 was not being complied with.

A hearing was considered to have been held on February 19, 2013 regarding the condition of the residential premises by way of an inspection. On March 12, 2013 the Director conducted a hearing pursuant to Section 4.(2)(d) of the Act.

On October 17, 2013, the Director issued Order LD13-322 which states in part:

“Based on the evidence and submissions before me, it is determined that the condition of the unit was serious enough to make the unit unfit for habitation and therefore the Officer finds that the lessor has violated Section 6.1 of the Act...”

...

IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the lessee and the lessor for the residential premises located at 4062 Fort Augustus Road, Fort Augustus, PE, is hereby terminated as of December 31, 2012.***
- 2. The lessor shall pay the lessee an amount of \$740.00 on or before November 12, 2013.”***

Docket No. 13-178

On February 19, 2013 a lessor, Ed Keunecke (the Appellant) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated February 20, 2013 alleging that Statutory Condition 8A was not complied with.

The Director conducted a hearing on March 12, 2013 pursuant to Section 4.(2)(d) of the Act.

On October 17, 2013, the Director issued Order LD13-323 which states in part:

“IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the lessee and the lessor for the residential premises located at 4062 Fort Augustus Road, Fort Augustus, PE, is hereby terminated as of December 31, 2012.***
- 2. The lessor shall pay the lessee an amount of \$740.00 on or before November 12, 2013.***

...

IT IS THEREFORE ORDERED THAT

- 1. No order for payment is required as the \$740.00 has already been taken into account in Order LD13-322.”***

The appeal was heard before the Commission on November 26, 2013. The Appellant was present. The Respondent was not present.

EVIDENCE

The Appellant submitted that the Respondent as tenant had a responsibility under section 14 of the Public Health Act Rental Accommodation Regulations to notify the Respondent as landlord of any defective plumbing, infestation or unsanitary conditions. The Appellant submits that the Respondent never provided such notification during the four months he lived in the residential premises. The Appellant stated that the Respondent did not provide any notification of alleged deficiencies until after he moved out of the residential premises. The Appellant contended that the Respondent only provided such notice in order to terminate the lease and obtain a return of rent.

The Appellant further submitted that the four recommendations outlined in a July 5, 2012 letter from the Environmental Health Officer were all complied with before the Respondent had moved in. These recommendations covered four areas: electrical, leaks / holes, bathroom ventilation and furnace. The Appellant referred to copies of receipts he filed as part of Exhibit E-31. He noted in particular that the necessary electrical work and bathroom ventilation was completed by a qualified electrician on August 13, 2012. The Appellant stated that no bare / exposed wires were left. Electrical boxes were installed for future AC smoke detectors; these boxes had covers and the wires underneath had wire nuts installed. The Appellant contends that the Respondent removed the covers and then removed the wire nuts before taking pictures. He challenged the assertion that there were leaks / holes with the windows as most of the windows had been replaced before the June 2012 inspection. He referred to an invoice for window inserts dated November 22, 2010. The Appellant stated that the furnace was repaired in March 2012 and the furnace was checked over again in August 2012.

The Appellant also disputed accusations of health violations due to the presence of rodents. He noted that the July 5, 2012 letter from the Environmental Health Officer makes no mention of a rodent infestation. He noted that a few years ago he had gone to the expense of installing mesh wire 6 feet below grade and extending 2 feet above grade in order to prevent the entry of rodents into the basement. He provided the Commission with a copy of a receipt for the installation of the mesh wire.

The Appellant told the Commission that he had an agreement with the Respondent that the Respondent would do repair work on the house in exchange for a reduction in rent. One of the items to be repaired was to put on a new flue cap, which, in the opinion of the Appellant, was a “30 second job”. However, the Respondent never did this during the four months he lived in the residential premises. The Appellant stated that the Respondent never called off the deal and never asked the Appellant to fix these items.

DECISION

The Commission allows the appeal in part for the reasons that follow.

The Commission is mindful of the fact that the Appellant was specifically required to notify Environmental Health once the repairs had been made, await a re-inspection and await a determination that the premises could be rented. The Appellant ignored this requirement and by so doing, determined to take the law into his own hands. The Commission wishes to point out that such a process is designed to not only protect future tenants but also protect the landlord by establishing a record that problems have been rectified and the premises are once again suitable for rental occupation.

The Commission is also mindful that the Respondent did not file any complaints while he was living in the residential premises. The Commission also is of the view that Exhibit E-14 tends to suggest that the parties may have agreed that the premises be rented on an “as is” basis.

While a landlord has the responsibility to keep the residential premises "...in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into", a tenant also has the responsibility to alert the landlord to problems within the premises.

In the present appeal, the Commission believes that the Appellant had addressed the electrical and ventilation issues and most of the furnace issues, with the exception of the "flue cap". Concerns about the windows are more difficult to ascertain: the invoice presented by the Appellant establishes that the new windows were actually new window inserts and thus the problems noticed by the Environmental Health Officer may well have related to deteriorating window frames.

The Commission had the benefit of the sworn testimony of the Appellant. While the Respondent was fully apprised of the date, time and location of the hearing he was not present to testify.

By not following the process required by Environmental Health, the Appellant left himself vulnerable to the Respondent's accusations and the Commission cannot disagree with the Director's finding that the residential premises were unfit for habitation pursuant to section 6.1 of the ***Rental of Residential Property Act***. For this reason, the Commission agrees with the Director that the rental agreement shall be terminated, effective December 31, 2012.

However, the Commission finds that some, perhaps most, of the deficiencies noted in the July 5, 2012 letter from the Environmental Health Officer were addressed prior to the commencement of the Respondent's tenancy. Accordingly, the Commission varies the Director's Orders and removes the requirement for the Appellant to pay the Respondent the sum of \$740.00.

NOW THEREFORE, pursuant to the ***Island Regulatory and Appeals Commission Act*** and the ***Rental of Residential Property Act***

IT IS ORDERED THAT

1. **The rental agreement between the Respondent (lessee) and the Appellant (lessor) for the rental premises located at 4062 Fort Augustus Road, Fort Augustus Prince Edward Island, is terminated as of December 31, 2012.**

DATED at Charlottetown, Prince Edward Island, this **4th** day of **February**, **2014**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Acting Vice-Chair

(sgd. Peter McCloskey)

Peter McCloskey, 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)