



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR13028
Order LR14-06**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, made by Tim and Ann
Tompkins against Order LD13-369 dated
December 5, 2013 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 14th day of February, 2014.

John Broderick, Acting Vice-Chair
Michael Campbell, 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, made by Tim and Ann Tompkins against Order LD13-369 dated December 5, 2013 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On December 17, 2013 the Commission received a Notice of Appeal dated December 10, 2014 signed by a lessor, Tim Tompkins on behalf of himself and Ann Tompkins (the “Appellants”) requesting an appeal of Order LD13-369 dated December 5, 2013 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 4, 2013 a lessee, Cory Vuozzo on behalf of himself and Jeff Bass (the “Respondents”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated October 2, 2013.

The matter was heard by the Director on October 15, 2013 and in Order LD13-369 the Director ordered:

‘IT IS THEREFORE ORDERED THAT

- 1. The lessors shall credit the [sic] \$180.00 towards the rent for January 2014.**
2. [The Order then detailed ten deficiencies, setting out the remedy, if required, and providing a time for completion, as required.]

Note: The unit will be re-inspected in January 2014. A notice of inspection will be forwarded to the lessees and the lessors advising of the date and time of the re-inspection.’

The matter was heard before the Commission on January 16, 2014. The Appellants were represented by Ann Tompkins. The Respondents were represented by Cory Vuozzo and Barbara Moore.

EVIDENCE

Ms. Thompkins read a prepared statement (E-14) into the record. In brief summary, it is the Appellants’ position that various repairs had been performed prior to the Director’s Order, that the microwave and caulking were damaged by the Respondents, and that the Respondent, who has a tropical pet bird, had unrealistic expectations with respect to temperature.

E-14 also recounts events from the Appellants' perspective leading up to the issuance of an eviction notice, a matter not before the Director in Order LD13-369 and therefore not germane to the present appeal.

Mr. Vuozzo and Ms. Moore submitted on behalf of the Respondents that repairs were either not performed or performed inadequately. They pointed out that the rental agreement specifically listed a microwave as an included service / facility. They also had concerns about inadequate snow removal, a service included in the rental agreement. They also wondered how a landlord could evict a tenant if the tenant had given notice to terminate the rental agreement. They noted that they had sent notice by way of registered letter. Tracking of the letter stated that delivery was attempted on December 27, 2013 and a postal notice card left; however, the Appellants did not pick up the letter until January 2, 2014. They submitted that the temperature of the unit was kept at 15 degrees Celsius, yet the furnace kept running and running.

DECISION

The Commission allows the appeal in part.

While it may seem somewhat unusual for a microwave to be an included service in a rental agreement, the rental agreement did specifically include an over the range microwave. The Commission accepts the evidence of the Respondents that the microwave did not work. The Commission also finds that the Respondents did not cause the microwave to fail. Accordingly, the Commission agrees with the Director that a rent credit of \$60.00 for the microwave, representing \$10.00 per month for six months, should be granted towards the rent for January 2014.

However, the Commission does not accept the Director's finding that a return of rent credit of \$120.00 [\$20.00 per month for six months] should be granted for excessive electricity consumption attributable to a heating unit situated near a poorly weather-stripped outside door. The Commission finds that the Respondents took on the responsibility of heating an older home. Heat and electricity are not included services / facilities in the rental agreement. The Commission takes official notice that a monthly rent of \$600.00 for a house is rather inexpensive. However, such a low rent makes sense and is reasonable and fair when it is understood that the tenants will be taking the responsibility of heating a home that is drafty and perhaps poorly insulated and weather-stripped.

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. **Order LD13-369, item 1., is hereby varied to read as follows:**

“The lessors shall credit the sum of \$60.00 towards the rent for January 2014.”
3. **In all other respects, Order LD13-369 remains in effect.**

DATED at Charlottetown, Prince Edward Island, this **14th** day of **February**, **2014**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Acting Vice-Chair

(sgd. Michael Campbell)

Michael Campbell, 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)