



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14001
Order LR14-07**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, made by Wilhelmina Stevenson
against Order LD13-392 dated December 20,
2013 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Thursday, the 27th day of February, 2014.

John Broderick, Acting Vice-Chair
Michael Campbell, 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, made by Wilhelmina Stevenson against Order LD13-392 dated December 20, 2013 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On January 2, 2014 the Commission received a Notice of Appeal dated the same day signed by a lessor, Wilhelmina Stevenson (the “Appellant”) requesting an appeal of Order LD13-392 dated December 20, 2013 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 4, 2013 a lessee, Aine Miyake (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

The matter was heard by the Director on December 11, 2013 and in Order LD13-392 the Director ordered:

‘IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay to the lessee the sum of \$2,250.00 on or before January 31, 2014.”**

The matter was heard before the Commission on January 27, 2014. The Appellant was present. The Respondent was also present.

EVIDENCE

The Appellant presented a printout of received bank deposits (Exhibit E-9) which she submits establishes that the Respondent stayed at the residential premises for an agreed period of time.

The Appellant testified that at first all rent payments were through Study Abroad Canada while the Respondent was attending High School. However, after the Respondent started attending university, direct payments were made by her mother. The payments included room and board as the Respondent ate with the Appellant and her family. The Respondent’s mother would pay six months at a time at the rate of \$750.00 per month and the understanding was that the payments were not refundable if the Respondent chose to leave early. While the Respondent’s mother sent the payments, she was not otherwise involved in the rental arrangements.

The Appellant told the Commission that in the autumn of 2012 the Respondent told her she would be returning to Japan in April 2013 and she was not sure if she would be returning to the residential premises when she returned to university. Accordingly, the Respondent paid for a four month period [January to April 2013 included] in November 2012. However, in December 2012 the Appellant came home one day to find that the Respondent was packing and in the process of moving out.

The Respondent testified that the parties had never agreed that the payments were non-refundable. The Respondent told the Commission that she “just couldn’t live there any more so I decided to leave”.

In response to a question from the Commission panel, the Respondent stated that she never asked the Appellant about what notice would be required to terminate the rental agreement.

DECISION

Having heard the evidence of the parties, it is the Commission’s decision to allow the appeal in part, reducing the return of rent from \$2,250.00 as ordered by the Director to \$1,500.00. The reasons for the Commission’s decision follow.

The Commission finds that both the Appellant and Respondent are honest and credible witnesses. The Appellant sincerely believed that the advance payment was for a fixed term and was non-refundable while the Respondent sincerely expected that the advance payment was on a month to month basis and thus refundable. Unfortunately, there was no agreement reached between the parties on how the advance payment was to be treated.

The Commission heard evidence that the initial rental of the residential premises, facilitated through Study Abroad Canada, required advance non-refundable payments. That said, once the Study Abroad Canada arrangement was no longer necessary, the parties were free to create their own agreement and advance payments could have been specified as refundable or non-refundable. However, there was no written agreement before the Commission, and based on the oral evidence of the parties, the Commission finds that no ‘meeting of the minds’ occurred between the parties on this key issue.

In the autumn of 2012, the Respondent advised the Appellant that she would be returning to Japan in April 2013 and also advised the Appellant that she might not be returning to the residential premises when she returned to Prince Edward Island in September 2013 to continue her studies. The Commission finds that the Respondent had thus effectively requested that the rental agreement continue for an additional four months e.g. January to April 2013 inclusive, with no commitment beyond that period. Whether or not the rental agreement had previously been a month to month agreement or for a fixed term, the Respondent, by requesting four months with no commitment beyond that period, had requested a fixed term and the Appellant consented to that request.

While finding that the final four months were in fact a fixed term may suggest that the Appellant would be entitled to retain the entire rental payment for the period January to April inclusive, the Commission notes that the rental payment was for room and board as the evidence indicates that the Respondent did eat with the Appellant and her family, at least at times. The Commission finds that the board component would not be an expense for the Appellant after the Respondent had left. In addition, the Appellant made no effort to find a new tenant during the four month period. The Commission considers both points as mitigating factors.

The Commission finds that, taking the above mitigating factors into consideration and in the interest of fairness to both parties, the Appellant is entitled to retain one-half of the advance rental payment for the period January to April 2013 inclusive. Accordingly, the Commission orders a variance to the Director's Order, requiring the Appellant to return rent in the reduced amount of \$1500.00 to the Respondent, said payment to be made in full on or before March 31, 2014.

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, with the Commission varying the terms of Director's Order LD13-392 as follows.**
2. **The Appellant (lessor) shall pay to the Respondent (lessee) the sum of \$1500.00, said sum to be paid in full on or before March 31, 2014.**

DATED at Charlottetown, Prince Edward Island, this **27th** day of **February**, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Acting Vice-Chair

(sgd. Michael Campbell)

Michael Campbell, 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)