



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14013
Order LR14-15**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act, made by Diane and Randy Dietrich against Order LD14-119 dated April 30, 2014 issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 17th day of June, 2014.

John Broderick, Commissioner
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, made by Diane and Randy Dietrich against Order LD14-119 dated April 30, 2014 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On May 9, 2014 the Commission received a Notice of Appeal dated the same day signed by a lessee, Diane Dietrich on behalf of Randy Dietrich and herself (the “Appellants”) requesting an appeal of Order LD14-119 dated April 30, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on September 17, 2013 a lessee, Paul Hynes (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

The Director heard the matter on April 3, 2014 and in Order LD14-119, the Director ordered:

‘IT IS THEREFORE ORDERED THAT

- 1. The lessors shall pay to the lessee the sum of \$221.94.**
- 2. Payment shall be made on or before May 30, 2014.”**

The matter was heard before the Commission on June 6, 2014. The Appellants were present. The Respondent was also present.

EVIDENCE

The Appellants told the Commission that the Respondent moved into the residential premises on September 3, 2013. The Appellants filed a six page written submission [Exhibit E-8] detailing their concerns. The Appellants expanded upon their concerns orally.

The Respondent contended that the return of rent should be \$250.00 rather than \$221.94, as he should not have to pay rent for September 1 and 2. The Respondent told the Commission about his concerns.

DECISION

The Commission denies the appeal for the reasons that follow.

After a review of the evidence and the testimony of the parties, the Commission agrees with the Rental Property Officer that the parties, by their conduct, mutually agreed to terminate the verbal rental agreement. The Appellants did not serve a Notice of Termination on the Respondent and the Respondent did not give the Appellants written notice that he wished to terminate the rental agreement.

The Appellants appeared to be under the impression that they were entitled to keep the rent money for the whole month of September 2013 so long as they could persuade the Commission that they were justified in terminating the verbal rental agreement. However, this is not the case and the Appellants did not appear to understand the relevant issue. The Respondent already paid money for one month's rent. The Appellants demanded that the Respondent leave on or about September 12, 2013 and the Respondent agreed to leave. The Appellants, having terminated the verbal rental agreement, even with the Respondent agreeing to such termination, cannot now keep the remainder of the rent money already paid for the entire month. The Appellants are therefore required to return the remainder of the rent, which the Commission finds to be \$221.94.

The Commission reminds the parties that inability to pay is not a mitigating factor within the *Rental of Residential Property Act*.

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. **Director's Order LD14-119 is confirmed in its entirety.**
3. **The Appellants (lessors) shall pay the sum of \$221.94 to the Respondent (lessee) as return of rent forthwith.**

DATED at Charlottetown, Prince Edward Island, this **17th** day of **June**, 2014.

BY THE COMMISSION:

(sgd. John Broderick)
John Broderick, Commissioner

(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)