



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14015
Order LR14-16**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act, made by Alan Ford against
Order LD14-151 dated May 23, 2014 issued
by the Office of the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Thursday, the 26th day of June, 2014.

John Broderick - Commissioner
Michael Campbell - 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 filed under Section 25 of the Rental of Residential Property Act, made by Alan Ford against Order LD14-151 dated May 23, 2014 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On June 10, 2014 the Commission received a Notice of Appeal dated June 5, 2014 from Alan Ford (the “Appellant”), requesting an appeal of Order LD14-151 dated May 23, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 7, 2014 a lessee, Kara Casford, on behalf of herself and Adam Casford (the “Respondents”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated May 7, 2014.

The matter was heard by the Director on May 20, 2014 and in Order LD14-151 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees shall pay to the lessor a fee of \$100.00 for the removal of the items listed below from the ice.***
- 2. Upon payment of the fee, the lessor shall return to the lessees the following items:***
 - (i) Two tires***
 - (ii) Trampoline frame***
 - (iii) Two pools***
 - (iv) One pool ladder***
 - (v) Two children’s Adirondack lawn chairs***
 - (vi) Two toy cars (cozy coupes)***
 - (vii) Two bicycles”***

The matter was heard before the Commission on June 26, 2014. The Appellant was present. The Respondents did not appear.

EVIDENCE

The Appellant told the Commission that the Respondents were allowed to use a storage building when they first moved into the premises in the spring of 2013. In July 2013, the Appellant provided the Respondents with a Baby Barn for their exclusive use. While the Respondents had some items in the Baby Barn, it was not full and the items in question could have been put in the Baby Barn before winter. The Respondents did not do that and the items could not be removed due to ice and snow. The Appellant engaged a company that he owns to melt the ice and snow, pick up the items, which were scattered around the yard and store the items. The items are still in storage. The Appellant contends that the Director's Order did not justify a reduction of the fee for the removal of the items.

The Respondents advised Commission staff the day before the hearing that they were unable to attend the hearing. Commission staff advised the Respondents that they could file an email submission that could be read into the record. As of the commencement of the hearing, no such submission was received.

DECISION

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

The Appellant provided the Respondents with a Baby Barn in the summer of 2013 for the storage of outdoor items. The Respondents failed to pick up their items and store the items in the provided Baby Barn. The Respondents moved out of the premises in February 2014 and the items were inaccessible because of ice and snow. The Appellant was preparing the premises for new tenants and hired a company he owns to melt the ice and snow, free the items, pick them up and store them.

The Appellant's company charged \$200.00 for the ice removal, retrieval and storage services, based on his company's normal hourly rate of \$125.00 per hour and a stated time required of 1.75 hours for the melting of the ice and the retrieval of the items. The Director reduced the claimed \$200.00 to \$100.00 on a "cost recovery" rather than a "profit" basis.

While the Director's approach may have merit under some circumstances, the Commission finds that in this case the Appellant should be able to recover his company's usual fee given the circumstances of this case.

Accordingly, the Commission allows the appeal and varies the Director's Order by requiring the Respondents to pay a fee of \$200.00 for the removal and storage of the items.

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.
2. Item 1. of the Director's Order is hereby varied to read: "The lessees shall pay to the lessor a fee of \$200.00 for the removal from the ice and storage of the items listed below."
3. In all other respects, Director's Order LD14-151 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **26th** day of **June**, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick - Commissioner

(sgd. Michael Campbell)

Michael Campbell - 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)