



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14-19
Order LR14-17A**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Amy MacKenzie against
Order LD14-213 dated July 3, 2014 issued by
the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Thursday, the 10th day of July, 2014.

J. Scott MacKenzie, Q.C., Chair
Ferne MacPhail, 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 filed under Section 25 of the Rental of Residential Property Act by Amy MacKenzie against Order LD14-213 dated July 3, 2014 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On July 4, 2014 the Commission received a Notice of Appeal dated the same date from a lessee, Amy MacKenzie (the Appellant) requesting an appeal of Order LD14-213 dated July 3, 2014 issued by the Director of Residential Rental Property (the Director).

By way of background, on June 23, 2014 a lessor, Chi Xu (the Respondent), filed with the Director a Form 2- Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated the same date, together with a Form 4 – Notice of Termination by Lessor of Rental Agreement dated June 1, 2014.

The matter was heard by the Director on July 3, 2014. In Order LD14-213 it states, in part:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises [25 Park Street, Charlottetown, PE] be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon on Tuesday, July 8, 2014.”***

The matter was heard by the Commission July 10, 2014. Both the Appellant and the Respondent were present. Sharon Ou testified briefly on behalf of the Respondent.

EVIDENCE

The Appellant testified that she had never received the Form 4 Notice of Termination. She also testified that she had not received the June 27, 2014 Notice of Hearing for the July 3, 2014 hearing before the Director. The Appellant testified that she told the Respondent about numerous problems with the residential premises. The Appellant maintains that the Respondent verbally agreed that she could withhold the June rent. The Appellant stated that she paid rent to the Respondent on July 2, 2014. The Appellant testified that she would pay the July 2014 rent by July 20, 2014.

Both parties acknowledged that they did communicate from time to time by way of text messaging.

The Respondent testified that he was aware of some of the problems raised by the Appellant. The Respondent denied that there was any verbal agreement to withhold rent. The Respondent explained that he placed the Form 4 in the door of the residential premises on June 2, 2014. The Respondent told the Commission that he did not text the Appellant that he had placed the Form 4 in the door of the residential premises.

Ms. Ou testified that she was present when the Respondent placed the Form 4 in the door.

DECISION

The Commission denies the appeal for the reasons that follow.

The Appellant failed to pay rent as due on June 1, 2014 and the Respondent served the Form 4 on the premises. The Appellant failed to pay outstanding rent within ten days of the service of the Form 4, and failed to apply to set aside the Form 4 within ten days. The Respondent is therefore entitled to a termination of the rental agreement.

The Commission does have some concerns about the method used by the Respondent to serve the Form 4. The Commission is also concerned that the Appellant may not have received notice of the July 3, 2014 hearing in time to attend the hearing.

The Commission denies the appeal. However, provided the Appellant pays the rental arrears of \$800.00 on or before July 21, 2014, possession of the residential premises shall be surrendered to the Respondent (lessor) on July 31, 2014 at 12 noon. In the event that the Appellant does not pay the rental arrears on or before July 21, 2014, possession of the residential premises shall be surrendered to the Respondent on July 22, 2014 at 12 noon.

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. **Provided the Appellant (lessee) pays the rental arrears of \$800.00 on or before July 21, 2014, possession of the residential premises shall be surrendered to the Respondent (lessor) on July 31, 2014 and the Sheriff is directed to put the lessor in possession of the residential premises on July 31, 2014 at 12 noon.**
3. **In the event that the Appellant (lessee) does not pay the rental arrears on or before July 21, 2014, possession of the residential premises shall be surrendered to the Respondent (lessor) immediately and the Sheriff is directed to put the lessor in possession of the residential premises on July 22, 2014 at 12 noon.**

DATED at Charlottetown, Prince Edward Island, this **10th** day of **July**,
2014.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)