



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14025
Order LR14-26**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Todd Munn, against
Order LD14-212 dated July 11, 2014 made by
the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 26th day of September, 2014.

John Broderick, Commissioner
Leonard Gallant, 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 filed by Todd Munn, against Order LD14-212 dated July 11, 2014 made by the Director of Residential Rental Property.

Order

BACKGROUND

On August 4, 2014 the Commission received a Notice of Appeal from a lessor, Todd Munn (the “Appellant”), requesting an appeal of Order LD14-212 dated July 11, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on December 19, 2013 a lessee, Ashley Johnston (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated the same date.

This appeal concerns residential premises situate at 155 Euston Street, Unit 3, Charlottetown, Prince Edward Island (the “unit”).

The matter was heard by the Director on June 12, 2014 and in Order LD14-212 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the parties is terminated effective December 31, 2013.*
- 2. The lessor shall return the security deposit plus interest of \$705.87 to the lessee forthwith.*
- 3. The lessor shall return rent in the amount of \$3300.00 to the lessee on or before August 5, 2014.”*

The matter was heard by the Commission on August 26, 2014. The Appellant was not present but was represented by his legal counsel Daniel Tweel. The Respondent and her mother Tamera Johnston were present.

EVIDENCE

Counsel for the Appellant submitted that the Director’s Order was “too generous” to the Respondent. Counsel took issue with the Director’s order describing a water leak as “flooding”. He described the Order as speculative and submitted that there was a lack of objective evidence to support its conclusions.

Counsel submitted that it was “quite troubling” that the Director would rely on using online information in Trip Advisor to support the Order’s findings. He submitted that the parties agreed to a fixed term lease, as evidenced by the first page of the lease and the bank draft, with monthly rent reduced from \$700.00 to \$675.00. He further submitted that there were no written or emailed objections given by the Respondent with respect to the amendment on the lease.

The Respondent testified that she entered into a verbal agreement with the Appellant in August 2013 to rent the unit. In September 2013, the Appellant left a blank rental agreement with the Respondent for her to fill in, which the Respondent completed to the best of her ability. The Appellant advised the Respondent that he offered three students a discount if they paid their rent up front. The Respondent testified that he did not state that this would be a fixed term rental agreement.

The Respondent told the Commission that the water leaks began in September 2013. She advised the Appellant of the leaks and he brought a dehumidifier into the unit.

The Respondent advised that she did not get a copy of the completed rental agreement until November 25, 2013.

The Respondent also testified that the Appellant had entered the unit on several occasions without giving the required notice. This entry had occurred both when the Respondent was in the unit and when she was absent from the unit.

Tamera Johnston testified that she had asked the Appellant about the status of the prepaid rent in the event the Respondent moved back home. Ms. Johnston stated that the Appellant had advised her that the Respondent would get her money back.

DECISION

The Commission denies the appeal and upholds the decision of the Director for the reasons that follow.

While it is clear that the Respondent agreed to pay the rent up front in order to obtain a \$25.00 per month discount, it is not clear that she ever agreed to a fixed term rental agreement. The Respondent and her mother were under the impression that the agreement remained a month-to-month agreement. While page one of the rental agreement contains a crossed out filled in portion addressing the “term” and the portion addressing “fixed term” is filled in, the crossed out portion was initialled by the Appellant but not the Respondent. The Commission accepts the evidence of the Respondent that she first learned of these amendments to the rental agreement on November 25, 2013 when she finally received a copy of the completed rental agreement. Accordingly, notwithstanding the Appellant’s attempts to alter the term of the lease, the Commission finds that the lease shall be construed as a month-to-month lease as the Appellant had not sought the Respondent’s approval to change the term from a month-to-month rental agreement to a fixed term rental agreement.

Section 30 of the *Rental of Residential Property Act* (the *Act*) reads as follows:

30. (1) *Where a rental agreement in writing is executed by a lessee, the lessor shall ensure that a fully executed duplicate original copy of the agreement is delivered to the lessee at the time of signing or within twenty-one days after the lessee signed the agreement.*

(2) *Where subsection (1) is not complied with, only the provisions of this Act and the standard form rental agreement are binding upon the lessee, and the lessee is not bound by any additional terms contained in the written agreement unless and until it is served on him in accordance with subsection (1).*

(3) *Where a written rental agreement has been entered into before the effective date and the lessee has not been supplied with a copy of the agreement, the lessor shall, within twenty-one days of the effective date deliver a copy of the agreement to the lessee in compliance with subsection (1). 1988,c.58,s.30.*

The Commission finds that the Appellant failed to deliver a fully executed duplicate original copy of the rental agreement within the twenty-one day period set out in the **Act**.

The Commission is concerned that the Appellant had entered the unit on several occasions without providing the Respondent with the required notice as stipulated in section 6(6) of the **Act**.

The Commission is also concerned that the Appellant attempted to retain the security deposit without first serving a FORM 8 NOTICE OF INTENTION TO RETAIN SECURITY DEPOSIT as required under section 10(5) of the **Act**.

It would appear by the aforementioned three infringements of the **Act** that the Appellant chooses to ignore the requirements of the **Act**.

Accordingly, the appeal is denied and the Director's Order is upheld.

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 and Director's Order LD14-212 is upheld.**
- 2. The rental agreement between the parties is terminated effective December 31, 2013.**
- 3. The Appellant (lessor) shall return the security deposit plus interest of \$705.87 to the Respondent (lessee) by paying said sum in guaranteed funds in trust to the Director on or before October 8, 2014.**
- 4. The Appellant (lessor) shall return rent in the amount of \$3300.00 to the Respondent (lessee) by paying said sum in guaranteed funds in trust to the Director on or before October 29, 2014.**

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

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, 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)