



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14024
Order LR14-30**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Hanna Winter against
Order LD14-224 issued by the Office of the
Director of Residential Rental Property on
July 16, 2014.

BEFORE THE COMMISSION

On Friday, the 31st day of October, 2014.

John Broderick, Commissioner
J. Scott MacKenzie, Q.C., Chair
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services & Appeals Division

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act filed by Hanna Winter against Order LD14-224 issued by the Office of the Director of Residential Rental Property on July 16, 2014.

Order

BACKGROUND

On July 30, 2014 the Commission received a Notice of Appeal from a lessee, Hannah Winter (the “Appellant”), requesting an appeal of Order LD14-224 dated July 16, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 6, 2014 a lessor, Thorne and Thorne (Prince Edward Island) Limited (the “Respondent”), filed with the Director a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated December 30, 2014 seeking a finding that rent is owed and an order that an amount found to be owed be paid, together with a Form 4 – Notice of Termination by Lessor of Rental Agreement dated December 9, 2014.

The matter was heard by the Director on March 6, 2014 and in Order LD14-224 the Director ordered:

“IT IS ORDERED THAT:

- 1. The lessee shall pay to the lessor the sum of \$983.97 on or before August 15, 2014.”***

The Commission heard this matter on September 18, 2014. The Respondent was represented by Andrew Thorne (Mr. Thorne) and Jodi Thorne (Ms. Thorne) who gave their testimony by way of telephone conference call. Chris Wood testified on behalf of the Respondent. The Appellant was not present but was represented by her mother Virginia Winter (“Ms. Winter”).

EVIDENCE

Ms. Winter told the Commission that the crux of the matter was not rent owing but a wrongful eviction and a wrongful premise for the eviction application. Ms. Winter submitted that the Respondent wished to rent the premises as a commercial property or, failing that possibility, two separate apartments and this was the real reason for the eviction application. Ms. Winter also submitted that the Respondent failed to set up an “acceptable rent payment system” and submitted that the onus is on the landlord to collect rent from a tenant.

Mr. Thorne filed Exhibit E-17 and submitted that the Appellant had an expectation of “unbelievable entitlement” with respect to the matter. Mr. Thorne testified that following the purchase of the premises, he requested that the rent be paid by post-dated cheques.

Mr. Thorne submitted that a Form 4 Notice of Termination was served on the Appellant on December 4, 2013 giving notice that the Respondent intended to do major renovations to the premises with a termination date of February 28, 2014. Mr. Thorne testified that he repeatedly requested that the rent be paid for December 2013. As rent was not paid, the Respondent served a Form 4 Notice of Termination on the Appellant on December 9, 2013 for non-payment of rent. Mr. Thorne testified that the Appellant never returned the keys for the unit and he only became aware that the Appellant had vacated the unit on January 24, 2014.

In response to an assertion by Ms. Winter that the Appellant paid the December 2013 rent on December 8, 2013, Ms. Thorne testified that she spoke with Ms. Winter on December 15, 2013, informed her that the rent needed to be paid and that Ms. Winter never mentioned that her daughter had paid the December rent.

Chris Wood, a licensed electrician and bonded security installer, who served as the Respondent’s local representative, testified that the top floor of the premises needed to be “gutted” and re-wired. He asked for rent in December 2013 but the Appellant would not pay the rent, as her roommate did not have his half of the rent. Mr. Wood testified that on December 31, 2013 he attended the premises along with a locksmith and was informed by the Appellant’s roommate that it was “an illegal eviction” and he refused to move out. The locksmith and Mr. Wood “walked away”. As the premises were still occupied on December 31, 2013, the locks were not changed until the Respondent had received Director’s Order LD14-108 giving the Respondent possession of the premises as of noon January 24, 2014.

DECISION

The appeal is denied and Director’s Order LD14-224 is upheld in its entirety.

Possession of the premises was dealt with by the Director in Order LD14-108 and that order is not under appeal. The sole remaining issue is arrears of rent as set out in Order LD14-224.

Exhibit E-17 contains printouts of numerous text messages between Mr. Thorne and the Appellant. On several occasions, Mr. Thorne requested payment of rent from the Appellant. Nowhere in Exhibit E-17 does the Appellant respond that the rent has been paid.

Ms. Winter claims that the rent was paid for December 2013 but Ms. Thorne refutes that claim and Mr. Wood testified that the Appellant refused to pay the rent when he requested it. There is no objective evidence on file such as bank statements, copy of cashed cheque etc. to establish that the rent was in fact paid.

The Appellant did not inform the Respondent that she and her roommate had vacated the premises and did not return the keys. Her roommate indicated that he intended to contest the Notice of Termination and remain in the unit. Accordingly, the Respondent only regained possession of the premises upon receiving Director's Order LD14-108 granting possession of the premises.

The Commission finds that rent of \$550.00 is owed for December 2013 and rent of \$433.97 is owed for the first 24 days of January 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 denied.
2. Director's Order LD14-224 is upheld in its entirety.
3. The Appellant (lessee) shall pay to the Respondent (lessor) the sum of \$983.97 on or before December 1, 2014.

DATED at Charlottetown, Prince Edward Island, this **31st** day of **October**, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair

(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)