



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14030
Order LR14-37**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by 101311 PEI Inc. against
Order LD14-279 of the Director of Residential
Rental Property dated August 28, 2014.

BEFORE THE COMMISSION
on Thursday, the 11th day of December,
2014.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act filed by 101311 PEI Inc. against Order LD14-279 of the Director of Residential Rental Property dated August 28, 2014.

Order

BACKGROUND

On September 19, 2014 the Commission received a Notice of Appeal from a lessor, 101311 PEI Inc. (the “Appellant”), requesting an appeal of Order LD14-279 dated August 28, 2014 issued by the Director of Residential Rental Property (the “Director”).

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

The matter was heard by the Director on July 8, 2014 and in Order LD14-279 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessor shall return rent to the lessee in the amount of \$356.06 to the lessee on or before September 28, 2014.”*

The matter was heard by the Commission on October 7, 2014. The Appellant was represented by Ally Kuo (“Ms. Kuo”). Gary Morley (“Mr. Morley”) testified on behalf of the Appellant. The Respondent advised the Commission that due to work commitments she would be unable to attend the hearing.

EVIDENCE

Ms. Kuo testified that Mr. Plumber had inspected and repaired the heating system in October 2013 (Exhibit E-6). On November 1, 2013 the Respondent advised Ms. Kuo that her apartment had no heat. On November 2, 2013 Mr. Morley checked the heating system and everything appeared to be fine. The following day Ms. Kuo received an email from the Respondent advising that there was no heat. On November 4, 2013 Mr. Morley checked again but the Respondent was not there. An email was sent informing the Respondent that Mr. Morley needed to open her apartment door in order to check the thermostat. The Respondent replied by email that the problem was in the basement and she would be home at 5:30 p.m. Mr. Morley was not available at that time. Ms. Kuo attempted to use her key but it would not work.

On November 6, 2013 Ms. Kuo requested a key and the Respondent advised she would make a copy and leave it at the hair salon. Ms. Kuo then scheduled an appointment with Mr. Plumber to look at the heating system. Ms. Kuo checked the hair salon daily; as of November 12, 2013 there was no key. Mr. Plumber required an appointment time and as there was still no key Ms. Kuo cancelled the appointment. On November 13, 2013 the Respondent emailed Ms. Kuo advising that the door is open. Ms. Kuo informed the Respondent that she had to cancel the appointment.

Mr. Morley advised that on November 20, 2013 following considerable “drama” on the part of the Respondent and her father, the plumber advised that the issue affecting the Respondent’s apartment was an electrical one, not a plumbing issue. Further servicing of the heating system was performed (Exhibit E-8). An electrician was contacted and it was determined that a new thermostat was needed in the Respondent’s apartment (Exhibit E-5). Mr. Morley explained that had he been able to access the Respondent’s apartment he could have checked the thermostat and replaced it himself. In his words, “a simple maintenance issue turned into a three week nightmare”.

The Respondent had advised Commission staff that she was unable to attend the hearing due to work commitments.

DECISION

The Commission allows the appeal for the reasons that follow.

While there is an obligation for a lessor to meet the statutory conditions set out in the ***Rental of Residential Property Act*** (the ***Act***) and ensure that there is adequate heat in the residential premises, the lessee has an obligation to cooperate so that the lessor’s agents can access the residential premises to test and repair the heating system.

In the present appeal, the evidence on file and the testimony of Ms. Kuo and Mr. Morley satisfies the Commission that the heating system had been recently serviced in October 2013, the Appellant’s agents promptly attempted to address the issue of a lack of heat in the Respondent’s apartment in early November 2013 but these attempts to do so were frustrated and delayed by a lack of access to the apartment. The cause of the heating problem as it affected the Respondent’s apartment was ultimately found to be a faulty thermostat that could only be diagnosed and replaced with full access to the Respondent’s apartment.

The appeal is allowed and the Director’s Order LD14-279 is hereby quashed by the Commission on appeal. As a result, the Appellant is not required to return the rent money to the Respondent as described in Order LD14-279.

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, and Director’s Order LD14-279 is hereby quashed.**

DATED at Charlottetown, Prince Edward Island, this **11th** day of
December, 2014.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, 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)