



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets: LR14035 and
LR14037
Order LR15-01**

IN THE MATTER of two appeals, under
Section 25 of the Rental of Residential
Property Act, of Order LD14-343 issued by
the Director of Residential Rental Property
dated October 23, 2014.

BEFORE THE COMMISSION

on Monday, the 12th day of January, 2015.

John Broderick, Commissioner
Michael Campbell, 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 two appeals, under Section 25 of the Rental of Residential Property Act, of Order LD14-343 issued by the Director of Residential Rental Property dated October 23, 2014.

Order

BACKGROUND

On October 24, 2014 the Commission received a Notice of Appeal (Docket No. LR14035) filed by a lessee, Chad Stordy (“Mr Stordy”) appealing Order LD14-343 issued by the Director of Residential Rental Property (the “Director”) dated October 23, 2014.

On October 28, 2014 the Commission received a Notice of Appeal (Docket No. LR14037) filed by a lessor, Nicholas MacLean Holdings Inc. (“MacLean Holdings”) appealing the same Order LD14-343.

By way of background, on March 24, 2014 Mr. Stordy filed with the Director a Form 9, Application re Determination of Security Deposit to which he attached a Form 8 – Notice of Intention to Retain Security Deposit which was signed by Robyn MacLean (Ms. MacLean) on behalf of the lessor.

The matter was heard by the Director on July 3, 2014 and Order LD14-343 states as follows:

IT IS THEREFORE ORDERED THAT

- 1. The lessor shall be entitled to receive the security deposit of \$901.50 from the money deposited in trust.***
- 2. Payment shall be made when the appeal period has expired.***

The Commission approved the consolidation of the two appeals and proceeded to a hearing on November 27, 2014. The lessee, Mr. Stordy was present at the hearing. Ms. MacLean represented MacLean Holdings.

EVIDENCE

Mr. Stordy told the Commission that the parties had agreed that the December 2013 rent would be free. He stated that the electricity was hooked up on December 4, 2013 and he was allowed to move a few things in. He moved in in mid-December and was in the premises “permanently” by December 26.

Mr. Stordy told the Commission that it was later agreed that January 2014 rent would be reduced in half in addition to the free December 2013 rent.

Mr. Stordy noted that the parties had agreed that he would pay an extra \$150.00 on top of the \$750.00 per month base rent and by doing so electricity would be included.

Mr. Stordy submitted that lease promotion document (Exhibit E-2) was not signed by Ms. MacLean and was not dated. Mr. Stordy submitted that the lease promotion was therefore not valid.

Mr. Stordy submitted that he felt a cleaning hourly rate of \$25.00 per hour was fair and that five hours of cleaning was reasonable. He later stated that he was agreeable to six hours' time for cleaning. However, he stated that he believed the actual carpet cleaning itself would be no more than twenty minutes as the rest of the time would be waiting time that could be used to perform other cleaning.

With respect to the issue of an overpayment for electricity, Mr. Stordy stated that he is prepared to let that issue rest.

Mr. Stordy submitted that any smoking was done outdoors.

Ms. MacLean testified that Mr. Stordy took possession of the premises in December 2013. She noted that the lease promotion page was stapled to the rental agreement. She submitted that additional cleaning of the premises was required.

Ms. MacLean noted that MacLean Holdings is appealing the hours and the rate for cleaning calculated by the Director. She submitted that general cleaning duties took six hours, of which three hours were for wiping the walls due to the smoke smell. She also submitted that the lock changing took one hour and the carpeting had to be steam cleaned twice due to the big pink stain and thus two hours was required for steam cleaning. She submitted that the total cleaning time was eight hours. With the time taken to acquire and change the lock a total of nine hours labour was incurred.

Referring to the payroll statement contained within Exhibit E-33, Ms. MacLean stated that MacLean Holdings pays its cleaners \$20.00 per hour but additional employer payroll costs, vacation pay etc. put the cost to MacLean Holdings at over \$25.00 per hour.

Ms. MacLean submitted that MacLean Holdings had offered the December rent for free conditional on the terms of the lease promotion agreement. An agent of MacLean Holdings had thought that the January rent would be reduced in half in addition to the free December rent. Ms. MacLean stated that MacLean Holdings let their agent's error go; that is to say, MacLean Holdings are not seeking a return of the free half-month's rent for January 2014. Ms. MacLean emphasized that if the lease is broken or void that the December 2013 rent in the amount of \$900.00 is to be returned pursuant to the terms of the lease promotion agreement. Ms. MacLean submitted that Mr. Stordy broke the lease and therefore must pay for the December 2013 rent.

DECISION

The Commission denies Mr. Stordy's appeal. Mr. Stordy obtained possession of the premises when he began moving in on December 4, 2013. The Commission agrees with the Director's assessment of the promotional offer clause and also agrees with the Director's interpretation of that clause contained on page 4 of Order LD14-343. The Commission finds that the promotional offer was free rent for the month of December 2013 conditional on fulfilling the one-year rental agreement. As Mr. Stordy vacated the premises prior to the conclusion of the one-year rental agreement, he is required to pay for the December 2013 rent out of the security deposit funds. However, as he did not have possession of the premises until December 4, 2013, the Commission agrees with the Director that the December rent repayable would be prorated, based on 28 days rather than 31 days, resulting a repayable rent of \$812.90.

The Commission agrees with the Director's finding that MacLean Holdings has a valid claim for a balance owing for rent and utilities for the month of February 2014 in the amount of \$93.58.

The Commission also agrees with the Director's finding that MacLean Holdings has a valid claim for the late payment fee of \$16.50, carpet cleaner charge of \$27.34, and key cutting and lock changing cost of \$46.12, all totalling \$89.96.

With respect to MacLean Holdings' appeal concerning labour fees, the Commission allows that appeal as it pertains to hours spent cleaning the premises and accepts the hourly rate submitted by MacLean Holdings for cleaning, that is to say, \$25.00 per hour at eight hours for a total of \$200.00. The eight hours represents six hours for regular cleaning, plus two hours for steam cleaning. However, the Commission finds that the time spent to obtain a new lock and have keys cut as well as the time to install the new lock is already included in the key cutting and lock changing charge of \$46.12. Therefore, the Commission is not prepared to allow a claim for a total of nine hours of labour.

The Commission finds that the total claim for MacLean Holdings is \$1196.44.

Given that the Director's jurisdiction on an application is only up to the amount of the security deposit plus interest, and given that the Commission only has the jurisdiction granted to the Director, this Order determines that MacLean Holdings is entitled to a return of the security deposit with interest in the amount of \$901.50. The balance of MacLean Holding's claim will be dealt with in Commission Order LR15-02.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

IT IS ORDERED THAT

1. Appeal Docket LR14035 is hereby denied.
2. Appeal Docket LR14037 is hereby allowed.
3. The lessor MacLean Holdings shall be entitled to receive the security deposit of \$901.50 from the money deposited in trust.
4. The aforementioned payment shall be made when the appeal period has expired.

DATED at Charlottetown, Prince Edward Island, this 12th day of January, 2015.

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)