



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15009
Order LR15-14**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Barry and Betty Lou
Munn against Order LD15-066 issued by the
Office of the Director of Residential Rental
Property on February 27, 2015.

BEFORE THE COMMISSION
on Friday, the 5th day of June, 2015.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Jean Tingley, 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 Barry and Betty Lou Munn against Order LD15-066 issued by the Office of the Director of Residential Rental Property on February 27, 2015.

Order

BACKGROUND

On March 19, 2015, the Commission received a Notice of Appeal from two lessors, Barry Munn and Betty Lou Munn (the “Appellants”) appealing Order LD15-066 issued by the Director of Residential Rental Property (the “Director”) dated February 27, 2015.

By way of background, on April 10, 2014 Garth MacKinnon (“Mr. MacKinnon”) filed with the Director on behalf of a lessee, Tammy Ford, a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated April 7, 2014. On May 2, 2014, the Appellants filed with the Director a Form 8 – Notice of Intention to Retain Security Deposit directed to Tammy Ford and Keith Ford (the “Respondents”) dated September 8, 2013. On January 13, 2015 Mr. MacKinnon filed with the Director a Form 9 – Application re Determination of Security Deposit.

The matter was heard by the Director on February 23, 2015 and Order LD15-066 states as follows:

“IT IS THEREFORE ORDERED THAT

- 1. The lessors shall pay the sum of \$977.00 to the Director in trust for the lessees on or before March 30, 2015.”*

The Commission heard the appeal on April 22, 2015. The Appellants were present. The Respondent, Tammy Ford-Muwin, participated by telephone conference call and was represented in the hearing room by Mr. MacKinnon. The Respondent, Keith Ford, was also present in the hearing room.

EVIDENCE

The Appellants read into the record a written statement (Exhibit E-27). They noted that Mrs. Munn normally attends to the signing of rental agreements but due to her health at the time, the Appellants’ son, Wade Munn, attended to the review and signing of the lease. The Appellants maintained that the fixed term rental agreement became a “continuous lease” as a result of a validly included clause.

Mr. MacKinnon submitted that Ms. Ford-Muwin signed the rental agreement alone on April 25, 2012 and did not receive a copy of the rental agreement. Mr. Ford did not sign the rental agreement at that time and did not get a copy of the rental agreement. The added clauses were not initialled and they could have been added after the signing. Verbal notice of termination was provided and later written notice of termination was also provided.

Ms. Ford-Muwin testified that she did not recall signing Schedule D and did not recall it being attached to the rental agreement. She also stated that she did not receive a copy of the rental agreement. She stated that when she signed the rental agreement, Wade Munn told her that Barry Munn would provide her with a copy of the rental agreement.

Mr. MacKinnon submitted that the rental agreement reverted to a month-to-month agreement.

DECISION

The appeal is denied for the reasons that follow.

Subsections 9(4), 9(5), 9(6) and 9(7)(g) of the **Rental of Residential Property Act** read as follows:

9(4) In addition to the statutory conditions, a lessor and lessee may provide in a rental agreement for other benefits and obligations that do not conflict with this Act or the provisions of the standard form.

9(5) An additional benefit or obligation is void unless it appears on both the lessor's and lessee's copy of the rental agreement.

9(6) Any alteration or deletion from provisions the standard form is required to contain is void.

9(7) The standard form prescribed under subsection (1) shall include ...

(g) the terms under which the agreement may be terminated.

The Commission finds that the wording contained in Exhibit E-17 is confusing and poorly drafted. The emailed clause (Exhibit E-32) uses somewhat different terminology and combined with E-17 adds to the confusion. There was too much uncertainty and confusion as to what Ms. Ford-Muwin was signing.

The Commission finds that the Respondents did not receive a copy of the rental agreement with the added clauses until the matter was commenced before the Director. Subsection 9(5) of the **Rental of Residential Property Act** applies and thus the added clauses are void. Accordingly, the fixed term rental agreement reverted to a month-to-month agreement and thus adequate notice of termination had been given.

The day before the Commission's hearing, the Appellants paid the sum of \$977.00 in trust to the Director.

Accordingly, the Commission denies the appeal and Director's Order LD15-066 is hereby confirmed. The Director is authorized to release the sum of \$977.00 held in trust to the Respondents upon the expiry of the statutory appeal period.

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 LD15-066 is hereby confirmed.
3. Upon expiry of the statutory appeal period, the Director is hereby authorized to release the \$977.00 held in trust to the Respondents.

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 2015.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(Leonard Gallant)

Leonard Gallant, Commissioner

(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)