



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15011
Order LR15-16**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Dora-Lynn MacNevin
against Order LD15-095 issued by the Office
of the Director of Residential Rental Property
on March 20, 2015.

BEFORE THE COMMISSION
on Tuesday, the 23rd day of June, 2015.

John Broderick, Commissioner
Michael Campbell, Commissioner
Peter McCloskey, Commissioner

Order

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, filed by Dora-Lynn MacNevin against Order LD15-095 issued by the Office of the Director of Residential Rental Property on March 20, 2015.

Order

BACKGROUND

On April 2, 2015 the Commission received a Notice of Appeal from a lessee, Dora-Lynn MacNevin (the “Appellant”) appealing Order LD15-095 issued by the Director of Residential Rental Property (the “Director”) dated March 20, 2015.

By way of background, on May 20, 2014 the Appellant filed with the Director a Form 9 – Application re Determination of Security Deposit together with a Form 8 - Notice of Intention to Retain Security Deposit signed by a lessor, Don Poley (Mr. Poley), on behalf of himself and Karen Poley (collectively the “Respondents”).

The matter was heard by the Director on March 9, 2015 and Order LD15-095 states as follows:

“IT IS THEREFORE ORDERED THAT

- 1. The lessors shall receive the sum of \$488.90 of the security deposit funds held in trust.*
- 2. The lessee shall receive the sum of \$15.71 of the security deposit funds held in trust.*
- 3. Payment to each of the parties shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on April 23, 2015. The Appellant was present. Connie Arsenault testified on the Appellant’s behalf. The Respondents were present.

EVIDENCE

The Appellant testified that she gave her notice on April 23, 2014. She explained that she told the Respondents she would pay May’s rent, but could not afford to do so until May 20 or so as she had to pay for her new unit. She told the Commission that she did not get to finish cleaning the unit on May 2, 2014.

The Appellant testified that she received permission to remove a bifold closet door and she stored the door in the basement, which was clean and dry at the time. The door was damaged by water in the basement and she wiped it down and re-installed it. She told the Commission she does not deny the pictures; rather she was not given the time to clean. The Appellant states she smoked on the back step and she never smoked inside the unit.

Ms. Arsenault testified that, while on the telephone with her granddaughter, she overheard arguing between the Appellant and Mr. Poley. Ms. Arsenault also questioned why it would take ten hours to clean the unit.

The Respondents told the Commission that the Appellant did not pay any rent for May 2014. The Respondents state that the Appellant called them on May 3, 2014 to advise that the cleaning was done and the yard fixed. The pictures were taken by the Respondents after May 3, 2014. The Respondents could smell smoke in the unit and this smell was stronger in the basement.

DECISION

The Commission denies the appeal and upholds Director's Order LD15-095 for the reasons that follow.

While the Appellant orally testified at the hearing before the Commission that she did not get a chance to finish cleaning the residential premises, in her May 20, 2014 Form 9 (Exhibit E-3) she stated that she delivered up possession of the residential premises on May 1, 2014 and she wrote that "The cleaning was done." There is a contradiction between the Appellant's written record and oral testimony and the Commission prefers the Appellant's relatively fresh written statement made 20 days or less after the event to her oral testimony some 11 months later.

In Exhibit E-20, the Respondents note:

"May 3, 2014 7:44 Dora called our house phone left a message place is all cleaned and yard is fixed."

Given the above, the Commission finds that the Appellant had completed her cleaning as of early May 2014.

The Commission agrees with the reasoning contained in Director's Order LD15-095.

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 LD15-095 is confirmed in its entirety.**

DATED at Charlottetown, Prince Edward Island, this **23rd** day of **June**, **2015**.

BY THE COMMISSION:

John Broderick, Commissioner

Michael Campbell, Commissioner

Peter McCloskey, 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)