



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15025
Order LR15-30**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Matthew Tilley against
Order LD15-266 issued by the Director of
Residential Rental Property on July 20, 2015.

BEFORE THE COMMISSION

on Wednesday, the 7th day of October, 2015.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Peter McCloskey, 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, by Matthew Tilley against Order LD15-266 issued by the Director of Residential Rental Property on July 20, 2015.

Order

BACKGROUND

On August 6, 2015 the Commission received a Notice of Appeal from Betty Tilley (“Mrs. Tilley”) the representative of a lessee, Matthew Tilley (the “Appellant”) requesting an appeal of Order LD15-266 dated July 20, 2015 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 12, 2014 Mrs. Tilley, on behalf of the Appellant, filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy by way of an order to authorize the termination of the rental agreement and a finding that the security deposit, or part thereof, should be forfeited or returned. On September 29, 2014 the Director received from the lessor, 101311 P.E.I. Inc. (the “Respondent”), a Form 8 – Notice of Intention to Retain Security Deposit. On October 28, 2014 the Director received from Mrs. Tilley a Form 9 – Application re Determination of Security Deposit.

The matter was heard by the Director on May 26, 2015 and in Order LD15-266, the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive the security deposit funds of \$550.00 held in trust.*
- 2. Payment to the lessor shall be made after the appropriate appeal period has expired.*
- 3. The lessor shall pay the lessee an amount of \$4.12 on or before August 12, 2015.”*

The matter was heard by the Commission on September 18, 2015. Mrs. Tilley represented the Appellant and participated at the hearing by way of telephone conference call. The Respondent was represented by Marion Tarvis.

EVIDENCE

Mrs. Tilley told the Commission that the Director had erred in finding that the lessor had advertised the residential premises on Kijiji. Mrs. Tilley submitted that the Appellant had placed the Kijiji advertisement. Mrs. Tilley also submitted that the Appellant had advised the Respondent's property manager in an email dated August 15, 2013 that he would only need the residential premises until the end of May 2014. Mrs. Tilley also referred to an April 17, 2014 email from the Appellant to the Respondent's property manager advising that he would be leaving the end of May 2014. Mrs. Tilley submitted that the Appellant lined up people who were interested in subletting the residential premises for the final three months of the rental agreement but the Respondent's property manager was looking for someone to sign a one-year rental agreement. Mrs. Tilley submitted that the Appellant's obligation was to find someone to sublet for the remaining three months of the lease.

Ms. Tarvis told the Commission that the lease was for a one year period commencing September 1, 2013 and ending August 31, 2014. Ms. Tarvis submitted that the Appellant was responsible for the lease and would have been responsible to pay rent for June, July and August had it not been for the fact that a new rental agreement was signed on July 1, 2014. She further submitted that the Appellant failed to provide a signed 60-day notice. She noted that while a lessee may sublet an apartment, the subletting of an apartment is subject to the consent of the lessor.

Ms. Tarvis told the Commission that the Appellant had referred seven interested parties to the Respondent's property manager. The property manager showed the residential premises to each of these seven parties. Of the seven parties, only two parties expressed further interest but no rental agreement was reached.

Ms. Travis stated that a lessor needs to find someone who will stay on a long-term basis as three months is a very short time and it increases costs to take on a three-month lease and then renew it. She submitted that the Appellant was "pressuring" the property manager to accept a three-month lease.

Ms. Tarvis submitted that it is expensive to get a new tenant, especially when a finder's fee must be paid. She submitted that it would have been in the property manager's personal best interests to find someone to sublet for the three months as her contract of employment provides for a 50% finder's fee. Ms. Tarvis submitted that the property manager gave up the opportunity to gain an additional \$275.00 of income by not entering into a three-month lease. In this case, the property manager chose to take on a lessor who is still there and by doing so, the property manager lowered her earnings by \$275.00 in order to find a client who would stay there for a year.

Ms. Tarvis noted that a three-month lease is "suspicious" because you have no idea why that person wants the apartment. She submitted that the property manager felt it better to obtain a long-term tenant.

DECISION

The Commission allows the appeal for the reasons that follow.

Both parties placed considerable emphasis on the matter of notice in their submissions before the Commission. The Appellant's representative submitted that the April 17, 2014 email met the notice requirements associated with a fixed term lease while the Respondent's representative submitted that the unsigned email did not meet the notice requirements and at least 60 days' notice ought to have been given before the Appellant vacated the residential premises. The Respondent further submits that had 60 or more days' notice been provided, it would have been easier to find a suitable tenant to enter into a rental agreement commencing June 1, 2014.

The Commission wishes to point out that the 60 day notice requirement set out in the **Act** requires at least 60 days written notice prior to the end of the rental agreement, in this case August 31, 2014. The Commission finds that the April 17, 2014 email from the Appellant that stated he would be leaving the end of May 2014, while in substance might have provided notice to the Respondent, does not meet the technical notice requirements set out in the **Rental of Residential Property Act** (the **Act**). The **Act** is an older piece of legislation, which does not reflect modern forms of communication frequently used by lessors and lessees, for example email and text messaging. That said, the **Act** is clear that a Notice must be signed. The Regulations made under the **Act** also provide a Form 3 NOTICE OF TERMINATION BY LESSEE OF RENTAL AGREEMENT for ease of use and to help ensure that the notice requirements of the **Act** are met.

While the notice requirements of the **Act** were not technically met, there is a duty on a lessor to mitigate set out in section 29:

29. If the lessee abandons the premises or terminates the rental agreement otherwise than in accordance with this Act, the lessor shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages. 1988,c.58,s.29.

The Director found that the Kijiji advertisement was placed by the Respondent. A review of the record before the Commission indicates that it was the Appellant, not the Respondent, who placed the Kijiji advertisement. This was not disputed by Ms. Tarvis at the hearing. The record before the Commission suggests quite strongly that the Appellant was making diligent attempts to find someone to sublet the residential premises and Ms. Tarvis acknowledged that seven interested parties were referred to the property manager.

Statutory condition 5(1), found in section 6 of the **Act** speaks to the subletting of residential premises:

5. Subletting Premises

(1) Where a fixed term rental agreement is for a period greater than six months, the lessee may assign or sublet the premises subject to the consent of the lessor, which consent will not unreasonably be withheld or charged for unless the lessor has actually incurred expense in respect of the grant of consent, in which case he shall be entitled to recover such reasonable expenses as were actually incurred.

Emphasis added.

The Commission finds that the Appellant made every effort to sublet the residential premises and was in contact with prospective lessees interested in assuming the rental agreement for the remaining three months. The Commission also finds that the Respondent's property manager preferred that a new twelve month rental agreement be entered into and may very well have turned away those prospective lessees interested in subletting the residential premises. Accordingly, on the civil standard of a balance of probabilities, the Commission finds that the evidence supports a conclusion that the property manager's strong preference for a 12-month rental agreement frustrated the Appellant's efforts to sublet the residential premises.

The appeal is allowed. The Commission finds that the Respondent's claim for June rent in the amount of \$550.00 is not a valid claim. The Commission accordingly orders that the security deposit of \$550.00 plus interest in the amount of \$4.12, be paid to the Appellant.

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.**
2. **The Appellant [lessee] shall receive the security deposit funds of \$550.00 held in trust.**
3. **The Respondent [lessor] shall pay the Appellant [lessee] the sum of \$4.12 representing accrued interest on the security deposit funds.**
4. **Payment of the above noted funds shall be made after the appropriate appeal period has expired.**

DATED at Charlottetown, Prince Edward Island, this **7th** day of **October**, 2015.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

(sgd. Peter McCloskey)

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)