



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15031
Order LR15-32**

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, filed by Albert Bradshaw against Orders LD15-330, LD15-331 and LD15-332 issued by the Director of Residential Rental Property and dated September 11, 2015 and September 15, 2015.

BEFORE THE COMMISSION

on Tuesday, the 20th day of October, 2015.

John Broderick, Commissioner
Michael Campbell, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

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BACKGROUND

On September 21, 2015, the Commission received a Notice of Appeal from a lessee, Albert Bradshaw (the “Appellant”), requesting an appeal of Orders LD15-330, LD15-331 both dated September 11, 2015 and Order LD15-332 dated September 15, 2015 all issued by the Office of the Director of Residential Rental Property (the “Director”).

By way of background on January 15, 2015, a hearing was held before the Director regarding a Notice of Termination by Lessor of Rental Agreement filed by a lessor, Ed Keunecke (the “Respondent”) and the Appellant’s application to set aside the Notice of Termination. During the course of that hearing, the Appellant and the Respondent agreed that the evidence presented during that hearing would also apply to the monetary claims made by the parties.

On January 23, 2015, 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: a finding that rent is owed; and an order that an amount found to be owed be paid. On September 11, 2015, the Director issued Order LD15-330, which states, in part:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application for a return of rent is dismissed.”*

On February 9, 2015, the Respondent filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy by way of: a finding that rent is owed; and an order that an amount found to be owed be paid. On September 11, 2015, the Director issued Order LD15-331, which states, in part:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee, Albert Bradshaw, shall pay to the lessor, Ed Keunecke, the sum of \$639.12 on or before October 9, 2015.”*

On January 23, 2015 the Appellant filed with the Director a Form 9 – Application re Determination of Security Deposit together with a copy of the Notice of Intention of Retain Security Deposit dated January 22, 2015. On September 15, 2015, the Director issued Order LD15-332, which states, in part:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive \$651.12 from the security deposit funds held in trust by the Director.*
- 2. The lessee shall receive \$80.88 from the security deposit funds held in trust by the Director.*
- 3. Payment shall be made when the appeal period has expired.”*

The Commission heard the appeal on October 15, 2015. The Appellant was present and represented himself. Tracey Bradshaw testified for the Appellant. The Respondent represented himself and participated via a telephone link.

EVIDENCE

The Appellant testified that the Respondent had dropped by the residential premises in early January 2015 seeking payment of rent. The Appellant did not have cash on hand but he indicated to the Respondent that he would have the funds the next day. The Appellant had recently received a cheque in the amount of \$1950.00 issued by a university in British Columbia. The Appellant submits that the Respondent took this cheque as security for the rental payment. The following day the Respondent returned to the premises. The Appellant paid him \$720.00 cash for the January 2015 rent and he received a receipt dated January 1, 2015 from the Respondent. The Appellant then requested the return of the cheque. The Respondent then informed him that he had attempted to cash the cheque, was informed that the cheque was bad, contacted the police and the police had the cheque.

The Appellant presented Exhibit E-21, which appears to be a signed statement from Tammy Morris, dated September 9, 2015, to corroborate his testimony. Tracey Bradshaw also testified to corroborate the Appellant’s testimony.

During questioning from the panel, the Appellant explained that he had received the cheque from someone named Mark. The Appellant did not know Mark’s surname. The Appellant explained that Mark was connected with the British Columbia university and the funds were paid for “online work”. The Appellant did not elaborate on the kind of online work he performed. He then stated that the funds were for buying things for Mark’s home in Prince Edward Island.

The Respondent testified that in early January 2015 he went to the residential premises to collect the rent for the month of January 2015. The Appellant did not have money to pay the rent but offered a cheque payable to him from a university located in British Columbia. The Appellant had signed the cheque over to the Respondent and this is clearly visible in Exhibit E-6 (see page 9 of the Commission's record). The Respondent submitted that if the Appellant had intended that the cheque only be held as security for a future cash payment and not actually be cashed, then the Appellant would not have signed it over. The Respondent paid the Appellant the sum of \$1230.00 in cash, issued a receipt for the balance of \$720.00 and went to the bank to cash the cheque. The Respondent was informed by the bank teller that the bank number was incorrect and the cheque was not valid. The Respondent then took the cheque to the police.

The Respondent filed Exhibit E-20 whereby he seeks rent money for the months of February and March 2015.

DECISION

The appeal is denied and Director's Orders LD15-330, LD15-331 and LD15-332 are hereby upheld in their entirety.

The Commission agrees with the findings, reasoning and conclusions made by the Director as written in the above three cited Orders.

With respect to the claim that the Respondent has attempted to file by way of Exhibit E-20, the Commission notes that such claim would be tantamount to a cross-appeal and the statutory time period for filing an appeal has now passed. In addition, the Respondent had filed a Form 4 on January 6, 2015 seeking termination of the rental agreement effective January 27, 2015. The Appellant moved out of the premises before that date and the Director in Order LD15-033 had determined that the Form 4 was valid and ordered the rental agreement terminated effective January 27, 2015. Order LD15-033, which was issued on January 22, 2015, was not appealed by either party and thus the Director's ruling stands. Accordingly, the Commission finds that there is no basis for making a claim for rent for February and March 2015 as the Respondent had sought and received a termination of the rental agreement effective January 27, 2015.

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 and Director's Orders LD15-330, LD15-331 and LD15-332 are hereby upheld in their entirety.**

DATED at Charlottetown, Prince Edward Island, this **20th** day of **October**, **2015**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Michael Campbell)

Michael Campbell, Commissioner

(sgd. Jean Tingley)

Michael Campbell, 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.