



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR15032  
Order LR15-33**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Killam Properties Inc.  
against Order LD15-343 issued by the Office  
of the Director of Residential Rental Property  
dated September 18, 2015.

**BEFORE THE COMMISSION**  
on Friday, the 23rd day of October, 2015.

John Broderick, Commissioner  
Douglas Clow, Vice-Chair  
Leonard Gallant, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

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Commission Administrator  
Corporate Services and Appeals

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Killam Properties Inc. against Order LD15-343 issued by the Office of the Director of Residential Rental Property dated September 18, 2015.

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# Order

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## BACKGROUND

On September 28, 2015, the Commission received a Notice of Appeal from Lei-Lanya Lavers (“Ms. Lavers”) on behalf of a lessor, Killam Properties Inc. (the “Appellant”), requesting an appeal of Order LD15-343 dated September 18, 2015 issued by the Office of the Director of Residential Rental Property (the “Director”).

By way of background, on August 18, 2014 a lessee, Megan Bonnell (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: an order to authorize the termination of the rental agreement; a finding that rent is owed; a finding that the security deposit, or part thereof, should be forfeited or returned; and an order that an amount found to be owed be paid.

The matter was heard by the Director on June 15, 2015 and in Order LD15-343, the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The rental agreement between the parties is terminated effective August 1, 2014.*
- 2. The lessor shall return August, 2014 rent in the amount of \$567.00 to the lessee forthwith.*
- 3. The lessor shall return the security deposit plus interest in the amount of \$292.90 to the lessee forthwith.”*

The Commission heard the appeal on October 20, 2015. Ms. Lavers represented the Appellant. The Respondent participated at the hearing by way of telephone conference call.

## EVIDENCE

Ms. Lavers testified that the lease continued until the end of September 2014. She noted that the Respondent wanted to leave in July 2014. The Appellant’s agent offered to assist in re-renting the unit.

In order to make the unit more attractive to a new tenant, the Appellant commenced renovations on August 1, 2014 hoping to have the unit completed by the middle of that month. The Respondent found out about the renovations, called, stated that she had not given permission for renovations, and the Appellant stopped the work with one or two days' work left to be done. Ms. Lavers stated, "We thought we were doing her a favour". Ms. Lavers thought that the unit had been advertised in August, but the Appellant ceased the advertisement after the Respondent called to complain. The renovations consisted of painting, new flooring in the bathroom, new bathroom vanity top.

The Respondent testified that the renovations also involved the removal of a shelf in the kitchen, the removal of a post, replacement of tile counter top in the kitchen. The Respondent stated that she did not authorize renovations but she was fine with a coat of paint. She did consent to the Appellant showing the unit to prospective tenants. She turned in her spare key but retained a key as she was still paying rent on the unit. She submitted that the unit could not be lived in during the renovations and that by renovating the unit beyond painting, the Appellant had taken possession of the unit, thus terminating the lease. The Respondent testified that she heard from a neighbour that the unit was being renovated and came back, viewed the renovations and took pictures.

## **DECISION**

The appeal is denied and the Commission upholds the decision of the Director set out in Order LD15-343.

The Commission agrees with the findings and rationale set out in Order LD15-343.

The Commission finds that the nature of the permission given by the Respondent to the Appellant is set out in an April 8, 2015 email from Sherrie Rollo, an employee of the Appellant, to Ms. Lavers (Exhibit E-10). From this email, it is apparent that the Appellant had received permission to perform maintenance, repairs and show the unit to prospective tenants.

The Commission finds that the renovations to the unit stretched out over the first half of the month of August. These renovations went beyond basic maintenance and repair. The Commission finds that by renovating the unit beyond mere maintenance and repair, the Appellant took possession of the unit, thus ending the rental agreement on August 1, 2014.

Accordingly, the appeal is denied and the Commission confirms Director's Order LD15-343 in its entirety.

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**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 Order LD15-343 is hereby confirmed in its entirety.**

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

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

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(sgd. Leonard Gallant)

Leonard Gallant, 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)