



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16002
Order LR16-02**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by MacAulay's Bakery & Deli
Inc. against Order LD15-449 issued by the
Director of Residential Rental Property on
December 24, 2015.

BEFORE THE COMMISSION
on Thursday, the 4th day of February, 2016.

John Broderick, Commissioner
& Panel Chair
J. Scott MacKenzie, Q.C., Chair
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, by MacAulay's Bakery & Deli Inc. against Order LD15-449 issued by the Director of Residential Rental Property on December 24, 2015.

Order

BACKGROUND

On January 8, 2016 the Commission received a Notice of Appeal from Brian Gallant ("Mr. Gallant"), the representative of a lessor, MacAulay's Bakery & Deli Inc. (the "Appellant") requesting an appeal of Order LD15-449 dated December 24, 2015 issued by the Director of Residential Rental Property (the "Director"), with respect to the rental unit located at 76 Parkview Drive, Charlottetown, Prince Edward Island (the "Unit").

By way of background, on November 20, 2014, a lessee, Lisa Blacquiere (the "Respondent"), filed with the Director a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit dated November 16, 2014 and a Form 4 – Notice of Termination by Lessor of Rental Agreement signed by the Appellant dated October 2, 2014.

The matter was heard by the Director on September 10, 2015 and in Order LD15-449, the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay the sum of \$362.11 to the Director of Residential Rental Property in trust for Lisa Blacquiere on or before January 24, 2016."*

The matter was heard by the Commission on January 28, 2016. Both the Appellant's representative, Mr. Gallant, and the Respondent were present.

EVIDENCE

The Unit is in a building that contains a total of three rental units. Mr. Gallant testified that the Appellant needed to renovate the whole building as it needed a complete rewiring together with numerous other renovations. He stated that the building was about fifty years old. He testified that some of the carpeting, one of the window sills, the kitchen sink and the toilet were not clean when the Respondent moved out of the Unit. Mr. Gallant referred the Commission to various photographs, which he submitted were taken the day after the Respondent moved out. Mr. Gallant told the Commission that he did not intend to remove the carpeting and that he was intending only to replace and remove sinks and toilets if they had to be replaced. Mr. Gallant testified that two different plumbers looked at the toilet and advised him that it could not be cleaned and he noted that the kitchen sink had been left in a horrible state. Mr. Gallant testified that the Respondent put up wallpaper and he submitted that she was obligated to remove the wallpaper before she moved out. Mr. Gallant told the Commission that he had only been through the building two times before the Respondent had left the Unit.

Mr. Gallant stated that it is the lessee's obligation to clean the Unit when they leave and that the lessee, during her tenancy, had a duty to look after the toilet and sink. Mr. Gallant stated that he did not agree with the Director's decision that the lessee was not responsible to clean the Unit to the same extent that would be expected with a lessee moving out due to the fact that Mr. Gallant had notified the Appellant that the Unit was going to have renovations carried out and he intended to replace the items he now says were not cleaned to his satisfaction. Mr. Gallant stated that in his opinion the fact that renovations were going to be carried out should have no bearing on whether the lessee was responsible for cleaning the Unit.

Mr. Gallant provided pictures of 72 Parkview Drive showing another unit which was very clean. He advised that the Respondent should have left the Unit in the same condition as the lessee in 72 Parkview Drive.

The Respondent testified that she had moved into the Unit in 2011 and accepted the Unit "as is". The previous lessor was a family friend and she expected that the Unit would be improved on over time. The toilet was previously stained and the Respondent described the stain as "scaling". She had attempted to clean the toilet with CLR and a wire brush but the stain would not come off. Most of the carpet stains were present when she first moved in to the unit. She testified that the wallpaper was present when she moved in. She testified that photo #6 of Exhibit E-13 and photo #9 of Exhibit E-14, which show walls covered with wallpaper, are not pictures of her Unit and that her Unit did not have the wallpaper that was shown in the pictures. The Respondent testified that the adjacent unit, 72 Parkview Drive, had been renovated shortly before the Appellant purchased the building.

DECISION

The appeal is denied and Director’s Order LD15-449 is upheld for the reasons that follow.

The Appellant had served the Respondent with a Form 4 Notice of Termination by Lessor of Rental Agreement dated October 2, 2014 to be effective November 30, 2014 (the “Notice”). The reason for the termination of the rental agreement was stated on the Form 4:

(n) I want to renovate the premises in the manner described on Appendix “A” attached hereto, and the renovations cannot be carried out while you are occupying the premises (s.15(1)(c) of Act);

Appendix “A” states:

APPENDIX “A”

Renovations to be carried out on the premises include:

- Replacement of flooring throughout;
- Removal and installation of new kitchens and bathrooms;
- Major electrical and plumbing overhaul;
- Extensive sanding and painting throughout; and
- Gut and refurbish basement.

On November 16, 2014 the Appellant completed a Form 8 Notice of Intention to Retain Security Deposit stating the following reasons:

TAKE NOTICE that I intend to retain from your security deposit the amount of \$ 350 for the following reason(s):

- ① CASHAS TOILET NEEDS TO BE REPLACED (200)
- ② CARPET NEEDS TO BE REMOVED/REPLACED (200)
- ③ WALLPAPER NEEDS TO BE REMOVED (200)
- ④ GENERAL CLEAN UP OF UNIT. (100)

The balance of your security deposit is \$ 0, calculated as follows:

Original Amount Paid:	\$ <u>350</u>	Date Paid:	_____
Accrued Interest:	<u>0</u>		
Sub-total:	<u>350</u>		
Less Above Charges:	<u>350</u>		
Balance:	<u>0</u>		

The Commission notes that Appendix "A" of the Form 4 very clearly notified the Respondent that the flooring was to be replaced throughout and there was to be a removal and installation of a new kitchen and bathroom in the Unit. The Notice clearly states replacement and removal of and installation of new – not refurbishment of old. The Commission finds that it would be unreasonable to construe this Notice as suggesting that the Appellant wished to re-use any of the flooring or re-use the toilet and kitchen sink. These renovations, if done in accordance with the Notice, were sufficiently major as to justify the eviction of the Respondent. It would be illogical to expect that the Respondent would have to clean items which were quite obviously going to be replaced.

By his own admission at the hearing before the Commission, Mr. Gallant had only seen the Unit twice prior to the Respondent moving out of the Unit. The Respondent had lived in the Unit for nearly four years. The Commission finds that the Respondent would be more familiar with the Unit and thus better able to state with confidence that photo #9 of Exhibit E-14 was not a photograph of her Unit.

The Appellant purchased the building shortly before issuing three Form 4s which evicted the Respondent and two other lessees on the premise of performing renovations. Presumably an agent of the Appellant had viewed the building prior to purchase. The Appellant therefore ought to have purchased the building aware of such deficiencies as stained carpets, toilets and sink.

On December 2, 2014, the Director wrote Mr. Gallant as representative of the Appellant and requested that the security deposit funds, with interest, in the amount of \$362.11 be paid to the Office of the Director of Residential Rental Property. The Director's December 2, 2014 letter quoted subsection 10(9) of the **Rental of Residential Property Act** and reads:

10.(9) Where the lessee makes an application pursuant to subsection (7), the lessor shall, not later than five days after service on him of the application, deliver to the Director the amount of the security deposit and accumulated interest which he has retained and, if he fails to do so, the Director may issue an order directing him to do so within such time as may be specified in the order.

The Commission finds that the Appellant has failed to deliver the security deposit, together with accrued interest, to the Director and thus the Appellant has breached subsection 10.(9) of the **Rental of Residential Property Act**.

The appeal is denied. The Commission hereby orders the Appellant to pay the sum of \$362.11, representing the security deposit with interest, to the Director in trust for the Respondent Lisa Blacquiere no later than 4:00 o'clock pm on Friday, the 19th day of February, 2016.

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. The Appellant MacAulay's Bakery & Deli Inc. is hereby in breach of subsection 10.(9) of the *Rental of Residential Property Act*.
3. The Appellant shall pay the sum of \$362.11 to the Director of Residential Rental Property in trust for the Respondent Lisa Blacquiere no later than 4:00 o'clock pm on Friday, the 19th day of February, 2016.

DATED at Charlottetown, Prince Edward Island, this **4th** day of **February**, 2016.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner
& Panel Chair

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair

(sgd. 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)