



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16008
Order LR16-08**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Melissa Trainor against
Order LD16-059 issued by the Director of
Residential Rental Property dated March 2,
2016.

BEFORE THE COMMISSION
on Wednesday, the 23rd day of March, 2016.

Douglas Clow, Vice-Chair
Leonard Gallant, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, filed by Melissa Trainor against Order LD16-059 issued by the Director of Residential Rental Property dated March 2, 2016.

Order

BACKGROUND

On March 8, 2016 the Commission received a Notice of Appeal from a lessee, Melissa Trainor (the “Appellant”), requesting an appeal of Order LD16-059 dated March 2, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on February 10, 2016 the Director received a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated February 8, 2016 regarding damage to the residential premises beyond reasonable wear and tear, together with a Form 4 – Notice of Termination by Lessor of Rental Agreement dated January 6, 2016. Both forms were signed by the representative of a lessor, Montague Housing Authority Inc. (the “Respondent”).

The matter was heard by the Director on February 25, 2016 and in Order LD16-059 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 11:00 AM, Monday, March 7, 2016.”*

The Commission heard the appeal on March 18, 2016. The Appellant was present. The Respondent was represented by Kathleen Hamilton (“Ms. Hamilton”). Darlene MacSwain, one of the Respondent’s Board members, was also present. Reuben Creed (“Mr. Creed”) testified on behalf of the Respondent.

EVIDENCE

The Appellant presented a written quote (Exhibit E-27) for \$600.00 to repair damage to the lawn. She contrasted her quote with quotes received by the Respondent in Exhibits E-14 and E-15. She submitted that the quotes received by the Respondent were excessive.

The Appellant further submitted that, pursuant to the language used in the January 6, 2016 Form 4, she was entitled to a reasonable time for correcting the damage. She further submitted that winter was not a reasonable time to repair a lawn, and thus such repairs would need to be delayed until the spring. She submitted that much of the damage was caused by a delivery vehicle delivering a couch and laundry appliances to the premises.

Ms. Hamilton submitted that CMHC had originally required the Respondent to re-shape the lawn to provide a positive slope away from the premises. This work was performed in the autumn of 2015 at an invoiced cost of \$7,204.80. Ms. Hamilton submitted that the quote in Exhibit E-27 would not account for damage done to the grade of the lawn.

Mr. Creed testified as to the work which was performed in the autumn of 2015 with respect to the grading of the lawn. He testified that, after the work had been done, he noticed tire tracks on the lawn and told the Appellant not to drive on the lawn. The following day, there were more tracks on the lawn and he told her again not to drive on the lawn. There were more tracks a week later and he installed marker stakes to prevent driving on the lawn. The following week he noticed that these stakes had been removed.

Mr. Creed testified that CMHC has strict requirements and accordingly, the lawn would need to be re-graded as the damage was “extreme”.

DECISION

The appeal is denied for the reasons that followed.

The Commission finds that the \$600.00 quote contained in Exhibit E-27 only pertains to repairing cosmetic damage to the lawn. The Commission accepts the evidence of Mr. Creed that the lawn would need to be re-graded to CMHC standards at an expense of between \$4,742.40 and \$5,130.00.

Section 16 of the ***Rental of Residential Property Act*** (the ***Act***) reads as follows:

16. (1) A lessee who has received notice of termination for any of the reasons set out in section 13, 14 or 15 may apply to the Director for an order setting aside the notice.

(2) An application under subsection (1) shall be made by a lessee not later than ten days after being served with the notice.

(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.

(4) The lessee shall serve the lessor with a copy of an application of the lessee under subsection (1). 1988,c.58,s.16; 1990,c.53,s.6.

Emphasis added by the Commission.

The Commission finds that the Appellant did not file with the Director a Form 6 application to set aside the January 6, 2016 Form 4 within ten days of receipt of said Form 4. Therefore, pursuant to subsection 16(3) of the **Act**, the Appellant is deemed to have accepted the February 6, 2016 termination date contained on the Form 4.

Accordingly, the appeal is hereby denied and Director's Order LD16-059 is upheld in its entirety.

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 LD16-059 is hereby upheld in its entirety.

DATED at Charlottetown, Prince Edward Island, this **23rd** day of **March**, 2016.

BY THE COMMISSION:

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

(sgd. Leonard Gallant)

Leonard Gallant, Commissioner

(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)