



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16005
Order LR16-09**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Phillip O'Halloran
against Orders LD16-013 and LD16-014 dated
January 20, 2016 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 12th day of April, 2016.

John Broderick, Commissioner
Douglas Clow, Vice-Chair
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

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BACKGROUND

On February 10, 2016 the Commission received a Notice of Appeal from a lessor, Phillip O'Halloran (the "Appellant"), requesting an appeal of Orders LD16-013 and LD16-014 both dated January 20, 2016 issued by the Director of Residential Rental Property (the "Director").

By way of background, on December 1, 2015 a lessee, King's Square Non-Profit Housing Corporation (the "Respondent"), filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement. Seeking an order to authorize the termination of a rental agreement and the return of rent for the month of November, 2015.

On December 8, 2015 the Appellant filed a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking a finding that rent is owed and an order that an amount found to be owed be paid.

Both applications were heard by the Director on December 21, 2015.

In Order LD16-013 the Director ordered:

"IT IS THEREFORE ORDERED THAT:

- 1. The rental agreement between the lessee and the lessor is terminated effective October 31, 2015.*
- 2. The lessor shall return to the lessee, King's Square Non-Profit Housing Corporation, the rent for the month of November, 2015 in the amount of \$731.00.*
- 3. Payment shall be made on or before February 22, 2016.*

In Order LD16-014 the Director ordered:

- 1. The lessor's application for rent owing for the month of December, 2015 is dismissed."*

The matter was heard by the Commission on March 2, 2016. The Appellant was present and was accompanied by his property manager Matthew O'Halloran. The Respondent was represented by Bill Campbell.

EVIDENCE

The Appellant testified that neither he nor his property manager Matthew O'Halloran had received any notice from the Respondent or the tenant that the tenant was either about to leave, or had just left, the residential premises. It was only when the Respondent telephoned the Appellant on November 23, 2015 to request a return of rent that the Appellant learned that the tenant had moved out of the residential premises at the end of October 2015. The Appellant also noted that they have yet to receive the keys for the residential premises. Prior to November 23, 2015, they had no reason to suspect that the residential premises were unoccupied as the rent for the month of November had been paid. The Appellant stated that while one month written notice is required, they would have appreciated any kind of notice, from either the tenant or the Respondent, that the tenant was leaving the residential premises.

Matthew O'Halloran testified that they entered the residential premises on November 23, 2015, and observed that the premises were unlocked, the radiators had been cut out, the refrigerator was moldy and there were two cases of wine on the floor as shown in the photographs contained in Exhibit E-16. He explained that he needed notice of when the tenant would be leaving so he could secure the residential premises.

Bill Campbell, on behalf of the Respondent, acknowledged that they did not give the Appellant written notice, but noted that the property was going to be demolished. Under questioning from the panel Chair, Mr. Campbell testified that he had been talking to Matthew O'Halloran on or before October 1, 2015 to inform him that the Respondent and CMHC had given the tenant permission to move. With respect to the condition of the residential premises on November 23, 2015, Mr. Campbell felt that somebody else was probably occupying the premises.

Mr. Campbell explained that the cheque for November rent was paid by mistake. The Respondent noticed the mistake because rent was paid to two landlords for the same tenant in the same month.

DECISION

The appeal of Order LD16-013 is allowed while the appeal of Order LD16-04 is denied for the reasons that follow.

While it is agreed that the statutory 30 day written notice was not given by the Respondent to the Appellant, the matter of a more informal oral notice remains rather nebulous. Both the Appellant and Matthew O'Halloran repeatedly denied receiving any such oral or verbal notice that the tenant was leaving and when she would vacate the residential premises.

There is no evidence before the Commission that the Respondent had informed the Appellant or an employee of the Appellant, that the tenant was definitely leaving the residential premises and on a specific date. Rather, it seems the evidence of the Respondent that on or about October 1st, 2015, Mr. Campbell had advised Matthew O'Halloran that the tenant had permission to go and find another apartment. The Appellant therefore knew that the tenant had the Respondent's approval to leave the residential premises, but it was not stated that she was in fact moving elsewhere and no date was specified. The Commission finds that such a vague oral statement would only apprise the Appellant that the tenant was approved to look for a new apartment and might very well be moving out in the near, but undetermined, future. The Appellant did not receive the keys at the end of October 2015 and also received a cheque for November 2015's rent, both of which would suggest that the tenant was still living in the residential premises.

According to Exhibit E-17, the tenant moved out of the residential premises on October 30, 2015. There is no evidence that the residential premises were inspected at the time the tenant moved out. Rather, the residential premises were left vacant for over three weeks until the Appellant learned the premises were vacant and then discovered said premises were unlocked.

The Commission agrees with the Director that the Appellant had no intention on re-renting the premises to another tenant; rather the Appellant's intent was, and still is, to demolish the premises and a permit to that effect was obtained from the City of Charlottetown in December 2015.

The Commission agrees with the Director on the matter of rent for December 2015 and hereby upholds the findings of Order LD16-014 in dismissing the Appellant's application for rent owing for December 2015. Accordingly, the appeal of Order LD16-014 is denied.

In Order LD16-013, the Director stated the following with respect to the rationale for requiring notice:

The reason a lessor requires notice is so that the lessor can find another lessee to move in as soon as possible after the lessee giving the notice moves out. If there isn't going to be another lessee, it stands to reason that notice is not required.

The Commission agrees with this statement when viewed from the evidence that the Director heard, noted in Order LD16-013 as:

Mr. Campbell stated that he gave the lessor verbal notice at the beginning of October 2015 indicating that [tenant name redacted] would be vacating the unit.

However, the Commission instead heard evidence to the effect that Mr. Campbell told Matthew O'Halloran that the tenant had been approved by the Respondent (and in effect by CMHC as well) to move to another residence. Matthew O'Halloran had, in effect, a 'heads-up' that the tenant was likely to move but he was not informed that she had found another apartment, was going to move in to it and he certainly did not know when.

While the primary reason for notice is to re-rent a rental property, notice also is important to allow a lessor to secure that property. In the present matter, it appears from the evidence that the Appellant did not know the premises were vacant until more than three weeks after the tenant had left. On November 23, 2015, the Appellant went to the premises and found that it was unlocked and damaged. As of the date of hearing, the Appellant still did not have keys for the premises and the Respondent acknowledges that they did not receive keys from the tenant.

The Director inspected the residential premises on December 21, 2015 and from the evidence before the Commission it certainly appears that the residential premises were unfit for habitation at that time. However, considerable damage to a vacant, unsecured building could have occurred during the more than three weeks that the premises were unsecured.

The Commission finds that by not providing any form of notice and not ensuring the return of the keys, the Respondent retained possession of the premises until November 23, 2015. Accordingly, the Commission finds that the Appellant is entitled to retain the November rent.

Accordingly, the Commission allows the appeal of Order LD16-013 and the Appellant is entitled to retain the sum of \$731.00.

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 of Director's Order LD16-014 is denied.
2. The appeal of Director's Order LD16-013 is allowed.
3. The Appellant [lessor] is entitled to retain the sum of \$731.00.

DATED at Charlottetown, Prince Edward Island, this 12th day of April, 2016.

BY THE COMMISSION:

(sgd. John Broderick)
John Broderick, Commissioner

(sgd. Douglas Clow)
Douglas Clow, Vice-Chair

(sgd. Ferne MacPhail)
Ferne MacPhail, 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)