



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16017
Order LR16-12**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Neil and Darlene Lawless,
against Order LD16-182 dated June 10, 2016
issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Thursday, the 25th day of August, 2016.

John Broderick, Commissioner
Leonard Gallant, Commissioner
Ferne MacPhail, 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, by Neil and Darlene Lawless, against Order LD16-182 dated June 10, 2016 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On June 23, 2016 the Commission received a Notice of Appeal dated the same day signed by a lessor, Neil Lawless (“Mr. Lawless”) on behalf of himself and Darlene Lawless (the “Appellants”) requesting an appeal of Order LD16-182 dated June 10, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 30, 2015 Mr. Lawless filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy from a lessee, Sara Steele (the “Respondent”) by way of: a finding that rent is owed; and an order that an amount found to be owed be paid. Attached to that application was a copy of a Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 22, 2012.

The matter was heard by the Director on October 15, 2015 and in Order LD16-182 the Director ordered:

‘IT IS THEREFORE ORDERED THAT

1. **The lessee shall pay to the lessors the sum of \$1395.68 on or before July 8, 2016.”**

The matter was heard before the Commission on July 18, 2016. The Appellants were represented by Mr. Lawless. The Respondent was not present.

EVIDENCE

Mr. Lawless presented additional documentation (Exhibit E-16). He submitted that the Respondent is an identified lessee who had signed the rental agreement. He submitted that the **Rental of Residential Property Act** definition of “rental agreement” refers to a “right to occupy” rather than a reference to actual occupation.

Mr. Lawless submitted that he never received a Form 3 Notice of Termination by Lessee of Rental Agreement from either the Respondent or her co-lessee. He submitted that he had not been informed that the Respondent had actually left the unit. He submitted that the Respondent did not exercise her options to invalidate the Form 4 Notice of Termination and therefore she terminated the lease by not paying the outstanding rent or applying to set aside the Form 4 notice. He submitted that he did not have delivery of possession until September 23, 2012. He submitted that Exhibit E-12 should not be given any weight as it was not dated.

DECISION

The Commission allows the appeal for the reasons that follow.

Clause 1(o) of the ***Rental of Residential Property Act*** reads as follows:

1.(o) "rental agreement" or "agreement" means an agreement, whether written or oral, express or implied, whereby a lessor confers upon a lessee the right to occupy residential premises;

The Respondent did not directly notify the Appellants that she was no longer living in the residential premises situate at 136 Heron Drive in Stratford, Prince Edward Island. The Appellants did not have accurate information as to whether or not the Respondent was continuing to occupy the residential premises beyond September 11, 2012. It was not until September 23, 2012 when the Appellants became aware that the tenants were no longer in possession of the residential premises.

The Commission did not have the benefit of the Respondent's testimony as she did not appear before the Commission.

The Commission finds Mr. Lawless to be a credible witness.

The Commission is cognizant of the fact that the Director issued Order LD14-381 on November 12, 2014 ordering the former co-tenant of 136 Heron Drive to pay the Appellants the sum of \$1,810.83 on or before December 6, 2014. Exhibit E-11 is a Notice of Default Judgment (Claim Number SISL-31440) filed by Mr. Lawless against the former co-tenant, said document stamped "Document Filed December 9, 2014 Supreme Court of P.E.I." The second page of Exhibit E-11 is stamped by the Deputy Registrar and identifies the particulars of the default judgment.

The Commission finds that, as the Respondent did not provide the Appellants with written notice that she had vacated the premises, her occupancy continued until the Appellants obtained possession of the residential premises. Therefore, the Respondent is responsible, along with her former co-tenant, for the rental arrears of \$1,810.83 for the period August 1, 2012 to September 23, 2012.

Accordingly, the Commission allows the appeal and varies Director's Order LD16-182.

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 allowed.
2. The Respondent (lessee) shall pay to the Appellants (lessors) the sum of \$1810.83 on or before September 16, 2016.

DATED at Charlottetown, Prince Edward Island, this **25th** day of **August**, 2016.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Leonard Gallant)

Leonard Gallant, Commissioner

(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)