



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16026
Order LR16-17**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential Rental
Property filed by Karen MacKinnon against
Order LD16-322 issued by the Director of
Residential Rental Property dated October
26, 2016.

BEFORE THE COMMISSION
on Friday, the 2nd day of December, 2016.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

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Section 25 of the Rental of Residential Rental
Property filed by Karen MacKinnon against
Order LD16-322 issued by the Director of
Residential Rental Property dated October
26, 2016.

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BACKGROUND

On November 14, 2016 the Commission received a Notice of Appeal from a lessee, Karen MacKinnon (the “Appellant”), requesting an appeal of Order LD16-322 dated October 26, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on December 31, 2015 a lessor, Lida Holdings Inc. (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 the rental agreement; a finding that rent is owed; and an order that an amount found to be owed be paid. With the Form 2, the Respondent filed a Form 4 – Notice of Termination by Lessor of Rental Agreement dated November 5, 2015.

The matter was heard by the Director on October 20, 2016 and in Order LD16-322 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessee shall pay to the lessor the sum of \$657.53 on or before December 31, 2016.”*

The Commission heard the appeal on December 1, 2016. The Appellant was present. William Pepperdine testified on behalf of the Appellant. The Respondent was represented by Rick Li (“Mr. Li”).

EVIDENCE

The Appellant presented one additional document. The Appellant told the Commission that Exhibit E-9 is the actual Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) that was taped to her door.

The Appellant submitted that there were discrepancies between Exhibit E-9 and the Form 4 Exhibit E-2 which had been filed with the Director. Most notably, Exhibit E-2 states that the premises must be vacated on or before November 24, 2015 while E-9 states the premises must be vacated on or before November 14, 2015.

The Appellant stated that she wished to remain in the premises on a month to month basis. However, the Appellant testified that the Respondent's property manager insisted that she sign a new lease or "we will throw you out".

The Appellant testified that she moved out of the premises on November 7, 2015.

Mr. Li stated that the Appellant had signed a one year fixed term lease with the previous owner of the premises. Mr. Li presented one additional document, Exhibit E-10, a copy of the Form 1 Standard Form of Rental Agreement between the Appellant and the previous owner of the residential premises, effective from November 1, 2014 to October 31st, 2015.

Mr. Li stated that if the Appellant were to leave she would need to give two months written notice prior to the end of the lease. The Respondent purchased the premises in 2015. Near the end of October 2015 there was no word from the Appellant as to whether she would stay or leave. The Respondent tried to have the Appellant sign a new lease, but she would not sign. The Appellant did not pay her November rent and thus a Form 4 was issued. The premises were leased to a new tenant with a rental agreement commencing December 1, 2015. Therefore, Mr. Li maintains that he is entitled to the entire rent for the month of November 2015 in the amount of \$800.00.

Mr. Li was not able to explain the discrepancies between Exhibits E-2 and E-9, both of which were signed by the Respondent's property manager.

Mr. Li also requested a return of his \$30.00 filing fee.

DECISION

The Commission agrees with the Director's Order in its entirety based on what had been presented at the October 20, 2016 hearing. However, the Director did not have the benefit of Exhibit E-9 presented to the Commission on December 1, 2016.

Subsection 13(1) of the ***Rental of Residential Property Act*** reads:

13. (1) Where a lessee fails to pay rent in accordance with the rental agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.

A Form 4 Notice of Termination by Lessor of Rental Agreement is a method whereby a lessor chooses to initiate the termination of the rental agreement and specifies a date for the lessee to vacate the premises which also serves as the termination date. The vacate date is specified by the lessor within the sentence, "You must vacate the premises on or before the __ day of __, 20__." Immediately under this sentence it is noted that for "reason (a)" [failure to pay rent] the date must be "at least 20 days from date of service of notice".

Where the lessee fails to pay rent, the lessor terminates the rental agreement by serving the Form 4 on the lessee, unless the lessee (i) invalidates the Form 4 by paying all rent due within 10 days of receiving the Form 4 or (ii) the lessee applies, within 10 days of receiving the Form 4, to the Director to set aside the Form 4 and the lessee is successful on that application. Unless the lessee continues to occupy the premises beyond the termination date, the lessor cannot seek rent beyond the termination date.

At the hearing before the Commission, Mr. Li could not explain the discrepancy between the Exhibit E-2 Form 4 and the Exhibit E-9 Form 4.

The Commission finds that the Form 4 identified as Exhibit E-9 was in breach of subsection 13(1) as that Form 4 required the Appellant to vacate the premises only 9 days from the vacate date specified.

The Commission accepts the testimony of the Appellant, which was not challenged by the Respondent, that it was the Exhibit E-9 Form 4 and not the Exhibit E-2 Form 4 which was taped to her door. Whether this Form 4 was served in ignorance of the law or whether it was served as a deliberate attempt to persuade the Appellant to vacate the premises early, the date chosen on the Form 4 taped to the Appellant's door was unlawful.

The Commission is of the view that the Respondent cannot use the early unlawful date for the purpose of motivating a tenant to leave early, and then avail itself of the later lawful date for the purpose of termination of the rental agreement with respect to calculating rent owed. Given that the Appellant was already out of the premises, and the Respondent selected an early vacate date, the Commission holds the Respondent to the date specified on the Form 4 actually served on the Appellant (Exhibit E-9) and finds that the Respondent terminated the rental agreement effective November 14, 2015.

Accordingly, the Appellant owes the Respondent rent for the period of November 1 to November 14, 2015, calculated as $\$800.00 \times 12$ divided by 365 days $\times 14$ days = $\$368.22$.

With respect to a return of the Respondent's \$30.00 filing fees, the Director has explained in Order LD16-322 that the Director does not have jurisdiction to award costs. An administrative tribunal, such as the Office of the Director of Residential Rental Property and such as the Commission, obtains its jurisdiction and its powers from legislation. Neither the *Rental of Residential Property Act* nor the *Island Regulatory and Appeals Commission Act* gives the Director or the Commission the power to award costs. As such, neither the Director nor the Commission can order the Appellant to pay the cost of the fees paid by the Respondent.

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 Appellant [lessee] shall pay to the Respondent [lessor] the sum of \$368.22 on or before December 31, 2016.**

DATED at Charlottetown, Prince Edward Island, this **2nd** day of **December**, **2016**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

(sgd. Peter McCloskey)

Peter McCloskey, 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)