



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16029
Order LR16-18**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Vicki Henderson and
Loni Henderson against Order LD16-338
dated November 10, 2016 issued by the Office
of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 14th day of December,
2016.

John Broderick, Commissioner
Ferne MacPhail, 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 Vicki Henderson and Loni Henderson against Order LD16-338 dated November 10, 2016 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On November 28, 2016 the Commission received a Notice of Appeal from two lessees, Vicki Henderson and Loni Henderson (the “Appellants”), requesting an appeal of Order LD16-338 dated November 10, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 18, 2016 a lessor, Kevin MacKay (the “Respondent”) filed with the Director 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 by paid.

The matter was heard by the Director on October 19, 2016 and in Order LD16-338 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees shall pay to the lessors \$1166.13 on or before December 4, 2016.”*

The Commission heard the appeal on December 13, 2016. The Appellants were present and were accompanied by their witnesses, Bobbi-Lea Henderson and Margaret Chisholm. The Respondent was also present.

EVIDENCE

The Appellants testified that they first became aware of an infestation problem in October 2015. They then promptly informed the Respondent of the infestation problem. The Appellants presented three new Exhibits, Exhibits E-15, E-16 and E-17.

In the Appellants’ Notice of Appeal, the Appellants disagreed with the amount of rent owing as established by the Director. The Appellants also requested that they be allowed to pay the amount owing in installments. At the hearing they indicated that they could pay up to \$50.00 every two weeks.

The Respondent testified as to his knowledge and actions with respect to the problem. The Respondent told the Commission that once he became fully aware of the infestation problem in early December 2015 he hired pest control professionals to treat the premises. The Respondent told the Commission that he would accept an installment plan so long as the outstanding rent was paid within one year.

DECISION

The evidence before the Commission strongly indicates that the introduction of the pests was not in any way caused by either party to this appeal.

The Commission allows the appeal in part, for the reasons stated below.

Under the ***Rental of Residential Property Act*** a lessee is required to pay rent in accordance with the rental agreement. A lessee is not allowed to withhold rent. The Commission and the Director are required to follow the ***Act***. The Commission must follow the ***Act*** even in compelling circumstances such as the present matter. If a lessee believes that a lessor has failed to meet one or more statutory conditions, the lessee may make a written application to the Director pursuant to section 8 of the ***Act*** in order to seek a remedy.

The Director had found that the Appellants owe the sum of \$1166.13 to the Respondent for unpaid rent. The Commission finds that the Director did not take into account \$20.00 in interest accrued on the security deposit which was noted on the Respondent's Form 8. Accordingly, the Commission adjusts the sum owed by the Appellants to the Respondent to \$1146.13. The Commission finds that this sum is due and payable on or before January 31, 2017.

The Appellants have requested that they be able to pay the sum owing to the Respondent in installments to be paid every two weeks and not exceeding the sum of \$50.00 per installment. The Respondent has consented to this request, so long as the time period does not exceed 12 months.

Given the oral consent of the parties expressed at the hearing and recorded on the Commission's hearing audio record, the Commission is prepared to order the suspension of the due date on the following terms and conditions:

Beginning within two weeks of the date of this Order, the Appellants shall pay the sum of \$50.00 every two weeks for 22 such payments, followed by a 23rd and final payment of \$46.13. As long as these payments are met on these terms and without any missed or void payments, the January 31, 2017 due date is suspended and no rent will be owing upon payment of the 23rd and final payment. However, in the event of a missed payment, or a payment made void by way of a cheque returned for insufficient funds or any other such voiding of payment, the balance remaining will become immediately due and payable.

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 in part.
2. The Appellants (lessees) shall pay to the lessors the sum of \$1146.13 on or before January 31, 2017. This represents a minor variation from the Director's Order.
3. Notwithstanding the due date for payment above, the parties have consented to payment of the above sum in instalments. Provided that the terms and conditions set out in this Order are followed, the due date for payment above is hereby suspended.
4. In the event the instalment terms and conditions are not followed, the balance owing shall immediately become due and payable.

DATED at Charlottetown, Prince Edward Island, this **14th** day of **December, 2016**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)