



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16018
Order LR16-19**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act filed by Glen and Marla Swan against Order LD16-237 dated July 29, 2016 issued by 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 filed under Section 25 of the Rental of Residential Property Act filed by Glen and Marla Swan against Order LD16-237 dated July 29, 2016 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 18, 2016 the Commission received a Notice of Appeal from two lessees, Glen and Marla Swan (the “Appellants”), requesting an appeal of Order LD16-237 dated July 29, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 17, 2015 two lessors, Don and Marsha Proude (the “Respondents”) 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 by paid.

The matter was heard by the Director on June 13, 2016 and in Order LD16-237 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessees shall pay to the lessors \$1,616.10 on or before August 29, 2016.”*

The Commission heard the appeal on December 12, 2016. Glen Swan (“Mr. Swan”) was present for the Appellants. The Respondents were also present.

EVIDENCE

Mr. Swan acknowledged that the Appellants owed money for rent but he was unable to tell the Commission how much rent was owed. He submitted that the Respondents did not know how much rent was owing either. He noted the Appellants received receipts sometimes, but not all the time. He noted the Respondents had no receipts pertaining to rent. He noted that an oil tank can only be filled to 90% capacity. He stated that the Appellant did make a payment of \$450.00 which the Respondents have denied; however, there is no receipt.

The Respondents acknowledged that receipts were only issued sometimes. The Respondents acknowledge that the Appellants were paid up on their rent as of May 2015. They noted that the Appellants did pay a security deposit. The Respondent’s agree with the calculation of rent and furnace oil as calculated by the Director.

DECISION

The Commission denies the appeal for the reasons that follow.

The Commission agrees with the findings of the Director that the Appellants owe \$688.90 for furnace oil, \$740.00 for unpaid rent for the month of June 2015 plus \$650.96 pro-rated unpaid rent for the 22 days of occupancy in July 2015 for a total of \$2079.86. However, the quantum payable ordered by the Commission is varied from that awarded by the Director as the Commission finds in a separate Order that none of the security deposit plus interest, in the amount of \$463.76 is to be allocated towards rent owing. The matter of the security deposit will be considered by the Commission in a separate Order to be issued on the same day.

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. The Commission varies the rent owing to a total of \$2079.86.
3. The matter of the security deposit will be considered in a separate Order issued the same day as this present Order.

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)