



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16019
Order LR16-20**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Don Proude and Marsha
Proude against Order LD16-236 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 under Section 25 of the Rental of Residential Property Act filed by Don Proude and Marsha Proude against Order LD16-236 dated July 29, 2016 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 22, 2016 the Commission received a Notice of Appeal from two lessors, Don and Marsha Proude (the “Appellants”), requesting an appeal of Order LD16-236 dated July 29, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 27, 2015 two lessees, Glen and Marla Swan (the “Respondents”) filed a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit signed by one of the Appellants, Marsha Proude (“Mrs. Proude”).

The matter was heard by the Director on June 13, 2016 and in Order LD16-236 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessors shall apply the sum of \$463.76 retained by the lessors from the lessee’s security deposit and interest to the rent owing claim made by the lessors determined in **Order LD16-237.**”*

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

EVIDENCE

The Appellants testified that they had to dispose of two truckloads of garbage representing items left in the basement and the backyard. The Respondents noted that the premises were rented to the Respondents as a non-smoking unit and testified that there was a strong smell of smoke throughout the premises. Even after painting the smell of cigarette smoke was strong and the Respondents had to use a “scent bomb” to remove the smell.

Mr. Swan told the Commission that he could not understand why a bathtub would have to be replaced because of cigarette smoke. He acknowledged smoking in the attached garage and very occasionally in the rest of the premises. He noted the kitchen appliances were dated and some were in poor condition and observed that he felt the Appellants were trying to make the Respondents pay for upgrades. He noted there were two items left in the back yard – a utility trailer that could be towed by a lawn tractor and a backyard swing set. He noted the Respondents spent a whole day cleaning the premises.

DECISION

The Commission allows this appeal for the reasons below.

While the very large claims for damage submitted by the Appellants to the Director could not be substantiated, the Commission finds that some cigarette smoke damage did occur to the premises and the Appellants did have to haul away a significant amount of unwanted items left behind in the basement and back yard. Accordingly, the Commission finds that the entire security deposit plus interest in the sum of \$463.76 shall be retained by the Appellants in satisfaction for their claim for damages to the premises.

A separate Order dealing with unpaid rent will be issued the same day as this present Order.

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 security deposit plus interest in the amount of \$463.76 shall be retained by the Appellants in satisfaction of smoke damage to the premises.**

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)