



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR17014
Order LR17-21**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Emmanuel Akpe against
Order LD17-189 dated July 25, 2017 issued by
the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Thursday, the 19th day of October, 2017.

J. Scott MacKenzie, Q.C., Chair and CEO
John Broderick, 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 Emmanuel Akpe against Order LD17-189 dated July 25, 2017 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 24, 2017 the Commission received a Notice of Appeal from Emmanuel Akpe (the “Appellant”), requesting an appeal of Order LD17-189 dated July 25, 2017 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on November 8, 2016 the Appellant was one of two people who signed and filed a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit dated November 4, 2016 signed by a lessor, Rachel Grey (the “Respondent”).

The matter was heard by the Director on July 14, 2017 and in Order LD17-189 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive the security deposit and interest in the amount of \$578.35 held in trust.*
- 2. Payment shall be made when the appeal period has expired.”*

The Appeal filed by the Appellant was only with respect to the question of whether or not the Appellant was a lessee of the Respondent and subject to the Order (LD17-189) issued by the Director.

On September 6th, 2017 the Commission met and set the date for the hearing of the Appeal as October 17th, 2017. The Appeal was heard on October 17th, 2017. The Appellant was present and was assisted by his representative, Dr. Noel Ayangma (“Dr. Ayangma”). The Respondent was also present.

EVIDENCE

Brief Summary of the Appellant's Position

The Appellant testified that he entered into a rental agreement (pages 4 to 8 of Exhibit E-14) with the Respondent and lived in the residential premises with his brother and his brother's then girlfriend ("the two other occupants") for several months. He then considered moving to Halifax, Nova Scotia and, therefore, in August 2016 the Appellant requested that the Respondent transfer the rental agreement to the two other occupants. A new rental agreement was signed between the Respondent and the two other occupants, without the Appellant's name on it (Exhibit E-3).

The Appellant acknowledged that he lived in the residential premises from April 1 to October 31, 2016, the date the rental agreement ended. He further acknowledged that he paid the security deposit and the rent for April to August 2016 inclusive directly to the Respondent. The two other occupants paid the rent for September and October 2016. The Appellant testified that during the months of September and October, 2016 he only resided in the residential premises on a part-time basis. He stated that he removed his belongings from the residential premises on October 26, 2016.

The Appellant testified that he was contacted by the Respondent in early November, 2016 and he attended at her home. She provided him with a Form 8 Notice of Intention to Retain Security Deposit that was addressed to the Appellant and the two other occupants. The Appellant contacted the Director's office to get advice on what could be done. He stated he was advised by the staff in the Director's office that he should complete a Form 9, Application Re Determination of Security Deposit. The Appellant completed the Form 9 and it was signed by him and his brother's then girlfriend. His brother did not sign the Form 9.

Dr. Ayangma submitted on the Appellant's behalf that the Respondent had agreed to transfer the rental agreement from the Appellant to the other two occupants and that the second rental agreement, which did not have the Appellant's name on it, rescinded the first rental agreement between the Respondent and the Appellant. He submitted that as a result of this action the Appellant ceased to be a lessee of the Respondent and that his name should be removed as one of the lessees named in the Order that is the subject of this Appeal.

Brief Summary of the Respondent's Position

The Respondent testified that the Appellant had asked her to draw up a new rental agreement showing the two other occupants as the lessees. The Respondent testified that she dealt primarily with the Appellant, as lessee, and not the two other occupants during the entire residential tenancy.

The Respondent submits that the Appellant was a lessee for the whole period of the tenancy.

DECISION

The Commission denies the appeal and agrees with the findings of the Director that the Appellant was a lessee for the following reasons.

Sections 1(g) and 1(o) of the *Rental of Residential Property Act* ("**Act**") read as follows:

(g) "lessee" means a person to whom permission is given, pursuant to a rental agreement, to occupy residential premises and includes his assigns and legal representatives;

...

(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 Appellant acknowledged that he originally entered into a rental agreement with the Respondent, paid the security deposit and the rent from April 1, 2016 to the end of August, 2016.

The Appellant lived in the apartment from April 1, 2016 through to the termination of the tenancy in late October, 2016. While he did testify that in the later months of the tenancy he was not staying at the apartment all of the time, it is clear that he was still residing at the apartment at the end of the tenancy.

The Respondent testified that at all times she considered the Appellant to be one of the three lessees and moreover he was her main contact during the tenancy as evidenced by numerous text messages provided in Exhibit E-14.

The Respondent contacted the Appellant to serve the documents for retention of the damage deposit at the termination of the rental agreement and thus it was clear that in the eyes of the Respondent, the Appellant was still one of the lessees. He attended at her residence when she contacted him to pick up the documents.

The Appellant had signed the original rental agreement in early April, 2016. In July of 2016 he went to the landlord requesting that a new rental agreement be drawn up showing the two other occupants as the lessees. There were a number of reasons given for this to be done. The Appellant submitted that this new rental agreement was signed by the two other occupants and, therefore, he was no longer a lessee. The Appellant's position was that the rental agreement was a contract and that he had transferred all of his rights and obligations under the contract to the two other occupants.

However, in addition to any formal contract law there are also statutory provisions of the **Act** that govern a lessor – lessee relationship. The **Act** makes it clear that the Appellant by his conduct continued to be a lessee under section 1(g) of the **Act**. The **Act** does not require all lessees to be listed on a lease agreement; it only requires under section 1(o) that the lessor confers upon a person the right to occupy residential premises. The Respondent was clear that the Appellant had the right to occupy, and was occupying, the premises up until the termination of the lease in October 2016.

The Form 8 for retention of damage deposit listed the Appellant as one of the lessees. It was the Appellant, not the two other occupants, who contacted the Director's office to seek guidance and there is no evidence that at the time of this contact that he claimed he was not a lessee.

The Appellant testified that he signed the Form 9 document because he was instructed to do so by the Director's staff. However, that Form 9 was signed by both the Appellant and his brother's then girlfriend.

The Appellant appeared at the hearing before the Director, took part in the hearing as a lessee and did not indicate at that hearing that he was not a lessee.

On the balance of probabilities, it is the finding of the Commission that, having considered all of the evidence from all of the parties, the Appellant was a lessee of the Respondent in accordance with the provisions of the *Act*.

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.

DATED at Charlottetown, Prince Edward Island, this 18th day of October, 2017.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair and
CEO

(sgd. John Broderick)

John Broderick, 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)