



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18003
Order LR18-04**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Kevin and Shirlene
MacKay against Order LD18-030 dated
January 25, 2018 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Tuesday, the 20th day of February, 2018.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
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 Kevin and Shirlene MacKay against Order LD18-030 dated January 25, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On January 29, 2018 the Commission received a Notice of Appeal from a lessor, Kevin MacKay, on behalf of himself and Shirlene MacKay (the “Appellants”), requesting an appeal of Order LD18-030 dated January 25, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 24, 2017 the Appellants 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 be paid.

The matter was heard by the Director on January 16, 2018 and in Order LD18-030 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessors’ application for rent owing is dismissed.”*

The Commission heard the appeal on February 13, 2018. Both Appellants were present. The Respondent Janna Durant (“Ms. Durant”) was not present but she was represented by Dwaine Bulger (“Mr. Bulger”).

EVIDENCE

Kevin MacKay (“Mr. MacKay”) testified that Ms. Durant originally paid her rent in advance on the 20th day of each month using postdated cheques. He testified that she then fell behind in paying rent around December 2016 or January 2017. He stated that she was then two months behind in paying her rent but did eventually pay the arrears in several payments; however, she was no longer paying in advance but was rather paying rent 20 days late. Mr. MacKay stated that she occupied the apartment until September 30, 2017. She was a good tenant and thus he returned her security deposit, not knowing that she had placed a stop payment on the September 2017 cheque.

Shirlene MacKay (“Ms. MacKay”) testified that she did not usually collect the rent. However, at Mr. MacKay’s request, she attended Ms. Durant’s apartment on August 27, 2017 to collect rent as Ms. Durant was behind in her rent. Ms. MacKay testified that she received \$900.00 in cash. Ms. MacKay testified that on August 27, 2017 she did not have her receipt book with her. She recalls that she asked Ms. Durant or Mr. Bulger for a piece of paper to write out a receipt and she is “pretty sure” she did but she cannot swear to that. Ms. MacKay testified that she knew they were behind in their rent and noted that when she had called Mr. MacKay to tell him she had received the rent money he was pleased.

Mr. Bulger testified that he occupied the apartment with Ms. Durant. They had put a stop payment on all the remaining post-dated cheques after they had given notice that they were moving. While they did receive a receipt for the security deposit they never received receipts for rent, even when the rent was paid in cash. Mr. Bulger testified that after he and Ms. Durant fell behind in November and December 2016 they paid \$1800.00 and they then paid a further \$900.00 in order that future rent payments would once again be in advance. He submitted that the payment of \$900.00 cash on August 27, 2017 was a payment of rent for the month of September. He further testified that the September 20, 2017 cheque was intended for the month of October.

DECISION

The appeal is denied and Director’s Order LD18-030 is hereby confirmed for the reasons that follow.

The Director is correct in asserting that “he who asserts must prove”. The Appellants are asserting that the Respondent owes one month’s rent in the amount of \$900.00. The onus or burden of proof is on a lessor to establish, within the civil standard of a balance of probabilities, that a lessee owes rent.

While the Appellants did previously provide a one page ledger sheet to the Director, this document shows a payment of \$900.00 for each of the months of March and April, followed by five more payments of \$900.00, followed by two entries of the letter “V”. Presumably, this single sheet represents the ledger for 2017 commencing in March of that year.

Mindful that the Respondent’s tenancy commenced in March 2015 and that the Respondent and Mr. Bulger fell behind in November and December 2016 [their evidence] or December 2016 and January 2017 [the Appellant’s evidence] and catch up payments were made some time thereafter, the Commission requested the Appellants to provide a copy of the handwritten rent ledger for their apartment building at 6 Pond Street for the period March 2015, when the tenancy began with the Respondent, to February 2017 inclusive. Mr. MacKay then responded:

Sorry I thought I had it but as I said in the hearing I only use it for monthly reference and don't keep them the accounting is done from my total deposits from all my buildings.

Without documentation, disputes often boil down to a matter of an individual’s recollection and conflicting verbal testimony results. In the present appeal, the Appellants are unable to furnish copies of receipts for cash payments and are unable to provide a ledger identifying payments received attributable to the Respondent.

Accordingly, the Appellants cannot satisfy the onus of proof, their claim for rent does not have an adequate evidentiary basis and therefore this appeal is denied.

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. Director's Order LD18-030 is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, this **20th** day of **February**, **2018**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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)