



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18005
Order LR18-05**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Nicholas MacLean
Holdings Inc. against Order LD18-046 dated
February 8, 2018 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Thursday, the 15th day of March, 2018.

M. Douglas Clow, Vice-Chair
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 Nicholas MacLean Holdings Inc. against Order LD18-046 dated February 8, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On February 18, 2018 the Commission received a Notice of Appeal from Robyn MacLean (“Ms. MacLean”), the representative of a lessor, Nicholas MacLean Holdings Inc. (the “Appellant”), requesting an appeal of Order LD18-046 dated February 8, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 8, 2016 the lessees, Mitch Vail and Elise Tierney (collectively the “Respondents”) filed a Form 9 – Application re Determination of Security Deposit. Attached to the application was a Form 8 – Notice of Intention to Retain Security Deposit signed by Ms. MacLean on behalf of the Appellant and dated July 5, 2016.

On July 11, 2016, the Director of Residential Rental Property wrote to Ms. MacLean to inform her of the requirement under Section 10(9) of the **Rental of Residential Property Act** (the “Act”) and requesting that the security deposit plus interest be provided to her.

The matter was heard by the Director on November 23, 2017 and in Order LD18-046 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay the sum of \$431.72 to the Acting Director of Residential Rental Property in trust for the lessees on or before March 8, 2018.”*

The Commission heard the appeal on March 15, 2018. The Appellant was represented by Robyn MacLean. Elise Tierney (“Ms. Tierney”) represented the Respondents.

EVIDENCE

Ms. MacLean testified that Mitch Vail had moved into the residential premises in 2013 and the lease promotion was offered to the Respondents each year as the rental agreement was renewed. The final rental agreement (Exhibit R-7) was dated January 8, 2016 and contained Appendix A, which set out the terms of the lease promotion, including circumstances which would void the lease promotion and require a deduction from the security deposit to reimburse the lessor for the lease promotion. Ms. MacLean testified that the circumstances which would void the lease promotion did happen and accordingly the Appellant deducted the amount of \$400.00 from the security deposit.

Ms. MacLean referred to Order LR15-01 (Exhibit E-20) and noted that the Commission had previously determined that the Appellant could recover a similar lease promotion from the security deposit in the event the terms of the lease promotion were not met. Ms. MacLean also testified that Director's Order Order LD16-226 did not accurately summarize the agreement reached between the parties in 2016. Ms. MacLean testified that the Appellant did not submit the sum of \$827.80 in response to the Director's July 11, 2016 letter because \$396.08 had been paid to the Respondents on July 5, 2016.

Ms. Tierney testified that she had previously agreed to the retention of \$400.00 from the security deposit as the Respondents had in fact "broken the lease". Ms. Tierney sought clarification on what the charge for cleaning supplies and labour were for.

Ms. MacLean explained that the cleaning supplies and labour were solely related to carpet cleaning supplies and the labour to clean the carpet. Ms. Tierney appeared to be satisfied with this explanation.

DECISION

The Commission allows the appeal for reasons that follow.

Commission staff confirmed that shortly before the commencement of the hearing, Ms. MacLean had presented a cheque in the amount of \$431.72 representing the balance of the security deposit plus accrued interest.

Director's Order LD18-046 referred to wording contained in Director's Order Order LD16-226 which implied that the lessor was not seeking to retain \$400.00 from the security deposit to reimburse the lessor for the lease promotion. Ms. MacLean testified that this summary of the oral agreement between the parties was not accurate and Ms. Tierney testified that she had agreed that the lessor could retain the \$400.00 as the lessees had broken the lease.

The Commission finds that although it was the lessor who had terminated the rental agreement, this termination was lawful and in response to the initial actions of the lessees. The parties had then come to an agreement to settle matters and this agreement was fulfilled.

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. Director's Order LD18-046 is overturned.
3. The lessor Nicholas MacLean Holdings Inc. shall be entitled to receive the remainder of the security deposit in the amount of \$431.72 from the money deposited in trust.
4. The aforementioned payment shall be made when the appeal period has expired.

DATED at Charlottetown, Prince Edward Island, this 15th day of **March**, 2018.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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)