



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18006
Order LR18-08**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Ken and Diann Marshall
against Order LD18-087 dated March 14, 2018
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Tuesday, the 17th day of April, 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 Ken and Diann Marshall against Order LD18-087 dated March 14, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On March 19, 2018 the Commission received a Notice of Appeal from a lessor, Diann Marshall (“Mrs. Marshall”), on behalf of herself and Ken Marshall (collectively the “Appellants”), requesting an appeal of Order LD18-087 dated March 14, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on December 19, 2016 the lessees, Ashley Clow and Janice Clow (collectively the “Respondents”) filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking a finding that the security deposit, or part thereof, should be forfeited or returned and an order that an amount found to be owed be paid.

On January 11, 2017, the Director of Residential Rental Property wrote to the Appellants to inform them of the requirements under Sections 10(4) and 10(5) of the **Rental of Residential Property Act** (the “Act”) and requesting that they provide to her a copy of the Form 8 – Notice of Intention to Retain Security Deposit.

The matter was heard by the Director on March 5, 2018 and in Order LD18-087 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessors shall pay the sum of \$754.15 to the Acting Director of Residential Rental Property in trust for the lessees on or before April 13, 2018.*

(Note: Cheque to be made payable to The Island Regulatory and Appeals Commission.)”

The Commission heard the appeal on April 17, 2018. The Appellant Diann Marshall and Stacey Cavanagh (“Ms. Cavanagh”) were present. Both of the Respondents were also present.

EVIDENCE

Mrs. Marshall testified that she believed that Mr. Marshall misunderstood the requirement to pay the security deposit funds into trust. She acknowledged that the Form 8 was not filed on time, but it has now been filed and the security deposit funds have been paid into the Commission in trust. Mrs. Marshall testified that the Respondents had been told the unit was a non-smoking unit.

Ms. Cavanagh testified that both cleaning and painting of the unit was necessary as otherwise the nicotine stains will later bleed through the paint.

Mrs. Clow testified that there was “no no-smoking policy”. Mrs. Clow further testified that Mr. Marshall was well aware that the Respondents smoked in the unit as he had visited the Respondents in the unit.

Mr. Clow testified that if he had been made aware of the need for additional cleaning prior to vacating the unit, he could have dealt with the additional cleaning as he works for a restoration company.

DECISION

The Commission allows the appeal for the reasons that follow.

Commission staff confirmed that at the time the Appellants filed the appeal an invoice was paid in the amount of \$754.15 representing the security deposit plus accrued interest.

The Commission agrees with the findings of the Director that the Appellants have proven their claim against the Respondent’s security deposit in the amount of \$740.00.

However, based on the fact that the Form 8 is now on file and based on the fact that the security deposit funds plus interest has been paid in trust to the Commission in compliance with the ***Rental of Residential Property Act***, the Commission reverses the finding of the Director and finds that the sum of \$754.15, representing the security deposit together with accrued interest, be paid to the Appellants.

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 Appellants (lessors) shall receive the security deposit and interest in the amount of \$754.15 held in trust.**
3. **Payment shall be made when the appeal period has expired.**

DATED at Charlottetown, Prince Edward Island, this **17th** day of **April, 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)