



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18011
Order LR18-19**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Stacy McKenna and
Chris Costain against Order LD18-141 dated
April 23, 2018 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 11th day of July, 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 Stacy McKenna and Chris Costain against Order LD18-141 dated April 23, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On April 27, 2018 the Commission received a Notice of Appeal from a lessor, Stacy McKenna, on behalf of herself and Chris Costain (the “Appellants”) requesting an appeal of Order LD18-141 dated April 23, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 13, 2016 a lessee, Nathan Critch (the “Respondent”) filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking an order to authorize the termination of the rental agreement; a finding that rent is owed; a finding that the security deposit, or part thereof, should be forfeited or returned; an order that an amount found to be owed be paid; and return of first month’s rent as premises were unsafe and uninhabitable and tenant did not take possession of the premises.

The matter was heard by the Director on April 11, 2018 and in Order LD18-141 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessors shall pay the sum of \$500.00 to the lessee on or before May 23, 2018.”*

The Commission heard the appeal on May 15, 2018. The Appellants were represented by Stacy McKenna (“Ms. McKenna”). The Respondent was represented by Joseph Critch (“Mr. Critch”).

At the hearing on May 15, 2018, Mr. Critch participated by telephone. Mr. Critch noted that he was travelling and had not received recent documents filed by email. The Commission granted an adjournment, with the new hearing date to be coordinated between the parties and Commission staff. While the Commission offered numerous earlier possible dates, the parties were not available until July 9, 2018.

The hearing reconvened on July 9, 2018. The Appellants Ms. McKenna and Chris Costain (“Mr. Costain”) and the Respondent’s representative Mr. Critch all participated by way of telephone conference call.

EVIDENCE

The Appellants Ms. McKenna and Mr. Costain testified that they had purchased the property in August 2016 and cleaned and painted the upstairs unit. They had provided pictures to the Respondent. The Respondent and his father Mr. Critch arrived at the unit on September 15, 2016, did not like the unit and requested a return of the rent. The Appellants agreed to return the security deposit and offered to return \$100.00 of the \$600.00 paid in rent. The Appellants testified that the unit was habitable. The Appellants provided photographs to the Commission which had been sent to the Respondent prior to his arrival at the unit. They submitted that the Kijji advertisement did not indicate that the unit had been renovated. They did acknowledge that the shower was small. They testified that they have no knowledge of the presence of mold.

Mr. Critch testified that the unit did not smell good and he believed that it smelled like mold. He speculated that paint might have been applied over mold. He acknowledged he did not see any mold in the unit. He testified that he thought the pictures make the unit look better than reality. He felt that it was not a fit environment for his son to live in.

DECISION

The appeal is allowed and Director's Order LD18-141 is hereby varied for the reasons set out below.

The Respondent and Mr. Critch paid the sum of \$900.00 to the Appellants, of which \$300.00 was for a security deposit and \$600.00 was for September's rent. Utilities were to be included in the rent. When the Respondent refused to occupy the unit, the Appellants returned the \$300.00 security deposit and also returned \$100.00 for unused utilities.

At issue before the Director and now before the Commission is the disposition of \$500.00 remaining in unreturned rent.

The Commission finds that while there was no evidence to support a finding that the unit was not fit for habitation, the unit did not meet the reasonable expectations of the Respondent and Mr. Critch. The documentary evidence as well as the testimony does suggest that there was an odour in the unit, the shower was very small with poor headroom and the outside deck was of limited use due to structural limitations. In addition, the evidence indicates that the Appellants had occupied the unit in the early days of September 2016.

The Commission finds that a complete return of rent is unwarranted. However, the Commission does find that a partial return of rent is warranted.

Accordingly, the Commission allows the appeal, varies Director's Order LD18-141 to require the Respondents to return a further portion of the rent, specifically the sum of \$200.00.

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 and Director's Order LD18-141 is hereby varied pursuant to the following payment.
2. The Appellants (lessors) shall pay the sum of \$200.00 to the Respondent (lessee) on or before Friday August 10, 2018.

DATED at Charlottetown, Prince Edward Island, this **11th** day of **July, 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)