



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18023
Order LR18-20**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Robyn Gallant against Order LD18-181 dated June 6, 2018 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 11th day of July, 2018.

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 filed under Section 25 of the Rental of Residential Property Act by Robyn Gallant against Order LD18-181 dated June 6, 2018 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On June 25, 2018 the Commission received a Notice of Appeal from a lessee, Robyn Gallant (the “Appellant”), requesting an appeal of Order LD18-181 dated June 6, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 10, 2018, the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination. Attached to the Form 6 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 5, 2018 signed by the lessor, David McQuaid (the “Respondent”).

The matter was heard by the Director on June 5, 2018 and in Order LD18-181 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s application to set aside the Notice of Termination is dismissed.*
- 2. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated May 5, 2018 for effect July 5, 2018 is valid.*
- 3. The rental agreement between the parties is terminated as of July 5, 2018 and the lessee shall vacate the rental premises by at 11:59 p.m. on that date.”*

The Commission heard the appeal on July 10, 2018. Both the Appellant and Respondent were present at the hearing. Alexandra Cantwell (“Ms. Cantwell”) testified on the Appellant’s behalf.

EVIDENCE

The Appellant testified that she has always paid her rent on time and she is finding it very difficult to find a new residential unit that would accommodate her and her family. While recognizing that the Respondent was seeking her unit for himself and his family, the Appellant submitted that there were other units in the Respondent’s complex that he could have moved into. The Appellant testified that she paid one half of the security deposit as \$450.00 cash (Exhibit E-9). The Appellant testified that the other \$450.00 of the security deposit was paid on her behalf by a third party named in Exhibit E-14.

The Respondent testified he would soon need to move from his own residential unit and he filed Exhibit E-13 to confirm this fact. The Respondent testified that he searched his own financial records but could not find any evidence of payment by a third party for the remaining half of the security deposit. The Respondent testified that his records identified a payment of \$950.00 or \$970.00 but no payment of \$450.00.

Ms. Cantwell testified and spoke to Exhibit E-14. She also testified that a prior employee of the third party named in Exhibit E-14 had noted that a payment of \$970.00 was made in September 2016 for the security deposit and a prorated amount for rent in September. She testified that it is possible that the two payments were “stacked” and went in together.

Following Ms. Cantwell’s testimony, the Respondent stated that he was willing to say that the “\$900.00 was paid” and put that matter behind him.

DECISION

The Commission denies the appeal and upholds Director’s Order LD18-181, subject to a variance of the termination date of the rental agreement between the parties to July 31, 2018 at 11:59 p.m.

As the Respondent has indicated that he is no longer pursuing a termination of the rental agreement under section 14.(1)(c) of the **Rental of Residential Property Act** [the “**Act**”] the basis remaining for the termination of the rental agreement is pursuant to section 15.(1)(a) of the **Act** which reads:

15. (1) *Where the lessor in good faith seeks to*

(a) have possession of the premises for occupation by himself, his spouse, children or parents, or the parents of his spouse;

...

the lessor may serve the lessee with a notice of termination to be effective not less than two months after it is served.

Given the testimony of the Respondent that he is required to vacate his own residential premises, said testimony which is supported by the letter from the Respondent’s current landlord (Exhibit E-13), the Commission agrees with the Director that the requirements of section 15.(1)(a) of the **Act** have been met and therefore the rental agreement between the Appellant and Respondent shall be terminated.

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. **The rental agreement between the parties is terminated as of July 31, 2018 and the Appellant (lessee) shall vacate the rental premises on or before 11:59 p.m. on that date.**

DATED at Charlottetown, Prince Edward Island, this **11th** day of **July, 2018**.

BY THE COMMISSION:

(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)