



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18030
Order LR18-32**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Max Han and Maggie Han
against Order LD18-232 dated July 24, 2018
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Thursday, the 11th day of October, 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 Max Han and Maggie Han against Order LD18-232 dated July 24, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 6, 2018 the Commission received a Notice of Appeal from Kevin Hobson (“Mr. Hobson”), the representative of two lessors, Max Hann and Maggie Han (the “Appellants”), requesting an appeal of Order LD18-232 dated July 24, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 14, 2017 a lessee, Ellen Steen (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 the security deposit, or part thereof, should be forfeited or returned; and an inspection of the unit.

The matter was heard by the Director on August 24, 2017 and in Order LD18-232 dated July 24, 2018 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the parties was terminated effective August 24, 2017.*
- 2. The lessors shall return the security deposit and interest in the amount of \$810.30 to the lessee forthwith.”*

The Commission heard the appeal on October 5, 2018. The Appellants were present and were represented by Mr. Hobson. The Respondent was also present.

EVIDENCE

The Appellants presented their evidence to the Commission. They testified that they purchased the apartment building from the builder and previous owner on August 1, 2017. They testified that the problems have since been resolved. They seek to retain the security deposit as partial compensation for the unpaid rent for the month of August 2017.

The Respondent presented her evidence to the Commission. She noted that several items of new furniture and toys were destroyed as a result of the problems with her unit. She testified that the builder and previous owner had agreed in July 2017 that he would waive the rent for the month of August given the destruction of some of her possessions. She seeks a return of the security deposit.

DECISION

The appeal is denied and the Commission upholds and confirms Director's Order LD18-232.

The Commission finds that there were serious problems with the unit in what was then a recently constructed apartment building. The Commission agrees with the reasoning used by the Director and the outcome of Order LD18-232.

These problems, detailed in Order LD18-232 and recounted by the parties in their testimony before the Commission, fully justified the inspection of the unit by the Director and her oral order given at that inspection hearing to terminate the rental agreement in August 2017. When it appeared that the oral order had not resolved the matter between the parties the Director then issued a written Order in July 2018.

While the problems appear to have been caused by the builder and previous owner and the Appellants inherited these problems when they purchased the apartment building, section 6.1 of the **Rental of Residential Property Act** nonetheless applies:

6. Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:

1. Condition of Premises

The lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.

The Director in Order LD18-232, having inspected the unit, stated:

“...a serious issue and it is not reasonable to expect the lessee to continue to reside in the unit with her young children.”

Having viewed the photographs of the unit taken by the Respondent on August 13, 2017 and considering the observations of the Director following her inspection of the unit on August 24, 2017, the Commission finds that the unit was not fit for habitation during the month of August 2017 and thus no rent is owed for that month.

While the Appellants may be justifiably concerned about the expenses they incurred to rehabilitate the unit and their loss of rent for the month of August 2017, the Commission has determined that the Respondent is not responsible for these matters.

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 LD18-232 is confirmed in its entirety.**

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