



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18038
Order LR18-36**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act filed by Kayla Pitre against Order
LD18-276 dated August 30, 2018 issued by the
Director of Residential Rental Property.

BEFORE THE COMMISSION

on Thursday, the 18th 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 filed under Section 25 of the Rental of Residential Property Act filed by Kayla Pitre against Order LD18-276 dated August 30, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On September 18, 2018 the Commission received a Notice of Appeal from a lessor, Kayla Pitre (the “Appellant”), requesting an appeal of Order LD18-276 dated August 30, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 14, 2018 a lessee, Judy Duffy (the “Respondent”) filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking an order to prohibit the discontinuance of the service in question; a finding that rent is owed; and an order that an amount found to be owed by paid. Attached to the Form 2 was a Form 10 – Notice of Increase in Rent of Residential Premises dated 14th day of December, 2018 (sic).

The matter was heard by the Director on July 18, 2018 and in Order LD18-276 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall pay the lessee the amount of \$800.00 on or before September 30, 2018.”*

The Commission heard the appeal on October 15, 2018. The Appellant was present. The Respondent was also present.

EVIDENCE

The Appellant acknowledged that she did modify the Form 10 Notice of Increase in Rent of Residential Premises (Exhibit E-2) because she felt that the omitted portion of the Form 10 did not apply. The Appellant stated that she did not know that a verbal rental agreement is as binding as a written one.

The Appellant testified that there was no written rental agreement and that the Respondent paid the increased rent for three months without a problem.

The Appellant stated that she “... was not educated about the rules ...” and that she is a first time home owner and was at the time a first time lessor.

The Respondent testified that she had rented the unit for seven years from the previous lessors. The Respondent testified that internet service was provided with the premises. The Respondent testified that, when the previous lessors moved out of their portion of the building, she had the internet service put in her unit so she would not lose service.

The Respondent testified that she was without heat for a few days in May 2018, and had to borrow electric heaters to stay warm as the unit was a basement unit. As a result of the use of the heaters her electricity bill increased. Her electricity bill also increased because the sump pump was plugged into the electric service for her unit.

The Respondent testified that she did not agree to the unauthorized rent increase.

DECISION

The appeal is denied and Director's Order LD18-276 is upheld.

Any increase in rent requires a lessor to provide notice as set out in section 22 of the **Rental of Residential Property Act** (the "**Act**") and any increase over the annual allowable percentage rental increase requires an application before the Director under subsection 23(3) of the **Act**.

The Appellant served the Respondent with a Form 10 Notice of Increase in Rent of Residential Premises which had been altered by removing the following text:

NOTE:

- THE RENT FOR RESIDENTIAL PREMISES MAY NOT BE INCREASED UNTIL 12 MONTHS HAVE ELAPSED SINCE THE DATE OF ANY PREVIOUS INCREASE, OR, IN THE CASE OF PREMISES NOT PREVIOUSLY RENTED, THE DATE ON WHICH RENT WAS FIRST CHARGED (SECTION 21 OF ACT).

- THE LESSEE MAY HAVE THIS INCREASE REVIEWED BY APPLYING TO THE DIRECTOR OF RESIDENTIAL RENTAL PROPERTY WITHIN 10 DAYS AFTER RECEIVING THIS NOTICE. (SECTION 23(4) OF ACT)

- FOR INCREASES GREATER THAN THE PERCENTAGE ALLOWED BY REGULATION, THE LESSOR MUST APPLY TO THE DIRECTOR OF RESIDENTIAL RENTAL PROPERTY NOT LATER THAN 10 DAYS AFTER NOTIFYING LESSEE. (SECTION 23(3) OF ACT)

- THE PROPOSED RENT MAY NOT BE CHARGED PENDING THE OUTCOME OF AN APPLICATION TO THE DIRECTOR. (SECTION 23(10) OF ACT)

- ADDRESS FOR DIRECTOR: 134 KENT STREET, P.O. BOX 577, CHARLOTTETOWN, P.E.I., C1A 7L1.

The Appellant also imposed a rental increase over the annual allowable percentage rental increase without first applying to and receiving approval from the Director.

The Commission accepts the unchallenged testimony of the Respondent that she had rented the unit for seven years with internet service provided. Neither the previous lessor nor the Appellant had applied to the Director under clause 8.(c) of the **Act** to authorize the discontinuance of internet service and make an adjustment to the rent.

The Commission agrees with the findings and remedy set out in Order LD18-276 and therefore said Order is upheld.

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 LD18-276 is upheld and remains in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this **18th** 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)