



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18043
Order LR18-41**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Greenwood Plaza
Apartments against Order LD18-291 dated
September 12, 2018 issued by the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Tuesday, the 30th 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 Greenwood Plaza Apartments against Order LD18-291 dated September 12, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On October 4, 2018 the Commission received a Notice of Appeal from Paul MacGregor (“Mr. MacGregor”) on behalf of a lessor, Greenwood Plaza Apartments (the “Appellant”), requesting an appeal of Order LD18-291 dated September 12, 2018 issued by the Office of the Director of Residential Rental Property (the “Director”).

By way of background, on December 22, 2017 a lessee, Pierre Arsenault (the “Respondent”) filed a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy by way of a finding that the security deposit, or part thereof, should be forfeited or returned.

On December 28, 2017, Jennifer Perry, the Acting Director of Residential Rental Property (the “Acting Director”) wrote to the Appellant to inform it of the requirements under Sections 10(4) and 10(5) of the **Rental of Residential Property Act** (the “Act”) and requesting that a copy of the Form 8 – Notice of Intention to Retain Security Deposit be provided to her.

On January 29, 2018, Mr. MacGregor filed a Form 8 – Notice of Intention to Retain Security Deposit. On January 30, 2018, the Acting Director wrote to the Respondent enclosing a copy of the Form 8 together with a blank Form 9 - Application re Determination of Security Deposit and requesting that the lessee complete and return same as soon as possible. On February 22, 2018 the Respondent filed with the Acting Director a completed Form 9. On June 8, 2018, the Acting Director wrote to the Appellant to request that the security deposit in the amount of \$675.00, plus interest, be sent to her in trust pending the hearing.

The matter was heard by the Director on August 28, 2018 and in Order LD18-291 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessor shall pay the sum of \$699.25 to the Acting Director of Residential Rental Property in trust for the lessee on or before October 12, 2018.*

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

The Commission heard the appeal on October 30, 2018. The Appellant was represented by Mr. MacGregor who participated by telephone. The Respondent was represented by Harley Richardson (“Mr. Richardson”).

EVIDENCE

Mr. MacGregor testified that the Respondent’s sister came into his restaurant, plunked down the keys and then walked out. He stated that he was not provided with the Respondent’s forwarding address and thus had no way of contacting the Respondent. He testified that the pictures he presented at the hearing before the Director were rejected.

Under questioning from the Commission panel, Mr. MacGregor acknowledged that he has not paid in the security deposit and stated that he does not have it right now.

Mr. Richardson referred to the documents provided to the Director which are also in evidence before the Commission, in particular Exhibit E-8 which is a timeline of events written and signed by the Respondent’s sister. Mr. Richardson pointed out that in Exhibit E-8 it was noted that Mr. MacGregor was provided with the Respondent’s forwarding address and the Respondent’s sister did have a conversation with Mr. MacGregor. Mr. Richardson submitted that the Respondent’s sister and her husband cleaned the unit for two days before the keys were returned to Mr. MacGregor.

DECISION

The appeal is denied and Director’s Order LD18-291 is upheld for the reasons that follow.

The onus or burden of proof rests on a lessor to establish whether there was damage caused by a lessee or whether a lessee failed to leave the residential premises in a clean state. At the hearing before the Director the Appellant showed pictures on his cellphone. The Director considered those pictures but ultimately rejected the Appellant’s claim. These photographs did not form part of the file record as a printed copy was not provided to the Director and thus the Commission has not seen them.

In the hearing before the Commission the Appellant did not submit printed copies of these pictures even though the Commission’s Notice of Appeal Hearing makes it clear that materials, such as photographs, upon which a party intends to rely, must be presented.

The Commission finds that the Appellant has failed to establish that damage was caused to the unit or that the Respondent failed to leave the unit in a clean state. Accordingly, the Commission agrees with the findings of the Director and the appeal is denied.

The Commission also takes notice that the Appellant has failed to pay the sum of \$699.25 ordered by the Director. Subsection 10.(2) of the Rental of Residential Property Act (“the **Act**”) reads:

10.(2) Subject to subsection (5), a security deposit or the proceeds thereof shall be held in trust by the lessor and, if in money, shall be deposited in a trust account at a chartered bank, trust company or credit union within the province.

Subsection 10.(4) of the **Act** reads:

10.(4) Subject to subsection (5), the security deposit, together with the interest set out in subsection (3) shall be returned to the lessee within ten days of the date on which the lessee delivers up possession of the residential premises.

Subsection 10.(9) of the **Act** reads:

10.(9) Where the lessee makes an application pursuant to subsection (7), the lessor shall, not later than five days after service on him of the application, deliver to the Director the amount of the security deposit and accumulated interest which he has retained and, if he fails to do so, the Director may issue an order directing him to do so within such time as may be specified in the order.

In the present matter, the Director had requested the Appellant to pay the sum of \$675.00 plus interest prior to the hearing before the Director. The Appellant failed to follow this directive and in Order LD18-291 determined that the security deposit and interest payable at the end of the tenancy totalled \$699.25. The Director then ordered:

The lessor shall pay the sum of \$699.25 to the Acting Director of Residential Rental Property in trust for the lessee on or before October 12, 2018.

The Commission finds that the Appellant may have breached subsection 10.(2) of the **Act** given his testimony that he does not have the money, has breached subsections 10.(4) and 10.(9) of the **Act**, and has failed to abide by an Order of the Director in Order LD18-291.

The Commission hereby orders the Appellant to pay the sum of \$699.25 to the Acting Director of Residential Rental Property in trust for the lessee on or before November 15, 2018. The cheque is to be made payable to The Island Regulatory and Appeals Commission.

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 and Director's Order LD18-291 is upheld in its entirety.**
- 2. The Appellant shall pay the sum of \$699.25 to the Acting Director of Residential Rental Property in trust for the lessee on or before November 15, 2018. The cheque is to be made payable to The Island Regulatory and Appeals Commission.**

DATED at Charlottetown, Prince Edward Island, this **30th** 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)