



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19011
Order LR19-07**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Hannah Frizzell against
Order LD19-067 dated February 27, 2019
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Thursday, the 4th day of April, 2019.

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 Hannah Frizzell against Order LD19-067 dated February 27, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On March 6, 2019 the Commission received a Notice of Appeal from Virginia Winter (“Ms. Winter”), the representative of a lessee, Hannah Frizzell (the “Appellant”), requesting an appeal of Order LD19-067 dated February 27, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on July 20, 2018 the Appellant filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking a finding that the security deposit, or part thereof, should be forfeited or returned. On September 11, 2018, a lessor, Andrew Ripley (the “Respondent”) filed with the Director a Form 8 – Notice of Intention to Retain Security Deposit dated August 17, 2018. On October 17, 2018 the Appellant filed with the Director a Form 9 – Application re Determination of Security Deposit.

The matter was heard by the Director on February 20, 2019 and in Order LD19-067 dated February 27, 2019 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive \$196.00 from the security deposit funds in the amount of \$384.80 held in trust by the Office of the Director of Residential Rental Property.*
- 2. The lessee shall receive \$188.80 from the security deposit funds in the amount of \$384.80 held in trust by the Office of the Director of Residential Rental Property.*
- 3. Payment to the lessor and the lessee shall be made after the appropriate appeal period has expired.”*

The Commission heard the appeal on April 3, 2019. The Appellant was represented by Ms. Winter. The Respondent was also present.

EVIDENCE

Ms. Winter stated that the Appellant moved out of the premises on June 30, 2018 after a satisfactory walk through inspection with a representative of the Respondent. Ms. Winter noted that the Appellant did not receive her security deposit and thus on July 20, 2018 filed a Form 2 requesting a return of the security deposit. Ms. Winter submitted that the **Rental of Residential Property Act** (“the **Act**”) requires the security deposit to be returned within ten days of a lessee delivering up possession. Ms. Winter also submitted that if a lessor intends to retain the security deposit, the landlord must file a Form 8 within ten days of the lessee delivering up possession of the premises. Ms. Winter submitted that the Respondent did not file the Form 8 until September 11, 2018, well beyond the ten day period.

Ms. Winter submitted that the pre-tenancy and post-tenancy photographs filed by the Respondent were not date stamped and did not reflect the immediate pre-tenancy condition nor the immediate post-tenancy condition of the premises. Thus, Ms. Winter submitted, the alleged damage could have occurred within the two months prior to the tenancy or the three months following the tenancy.

Ms. Winter submitted that the photograph showing alleged floor damage was likely dust or dirt, perhaps combined with moisture, under the refrigerator.

The Respondent submitted that he was informed on June 9, 2018 that the Appellant was moving out on June 30, 2018 and thus there was a failure to provide thirty days written notice. He testified that he had a friend present for the walkthrough inspection as he was out of the Province at the time. He stated that the premises were clean but there was a hole in the laminate flooring underneath the refrigerator. There were two poorly patched holes in the wall and the trim around one window had been replaced with white trim and did not match the brown trim of the other windows in the premises.

The Respondent stated that the photographs taken prior to the tenancy were the photographs used for the advertisement of the unit.

During questioning, it became apparent that the original refrigerator seen in the pre-tenancy photographs had been replaced with a larger refrigerator that could not be placed in the same location. The Respondent stated he was aware of the change in the refrigerator but did not move either refrigerator.

DECISION

The appeal is denied and Director’s Order LD19-067 is upheld for the reasons that follow.

Subsections 10.(4) and 10.(5) of the **Act** read:

(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.

(5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation.

Emphasis added.

The Commission observes that the **Act** provides the Director with the discretion to extend the time period cited under subsection 10.(5).

Pages 71 and 72 of the file reveals a text message from the Respondent to the Appellant, dated August 15, 2018 referencing two poorly repaired holes in the wall, a hole in the laminate flooring hidden by the refrigerator and the unmatched window trim. Page 73 shows a picture of the laminate flooring behind the refrigerator.

The Commission, having viewed page 73, finds that, although some dust and dirt is present, there is damage to the laminate flooring. Page 74 reveals two quite obvious wall patches. Page 64 reveals the white window trim, while page 66 shows brown window trim.

Although Ms. Winter rightly states that the Respondent's photographs do not have time and date stamps on them, the Commission also notes that the Appellant's photographs do not have time and date stamps either.

Director's Order LD19-067 made some findings in favour of the lessee while other findings were in favour of the lessor, and awarded \$188.00 of the security deposit to the Appellant with the remainder of \$196.00 to be awarded to the Respondent.

The Commission has heard the matter pursuant to the procedure set out in subsection 26.(1) of the **Act** and finds that the outcome ordered by the Director is reasonable. The Commission agrees with the disbursement of the security deposit ordered by the Director.

Accordingly, the Commission confirms Director's Order LD19-067.

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 LD19-067 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **4th** day of **April, 2019**.

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)