



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR19047 and
LR19051
Order LR19-29**

IN THE MATTER of appeals filed under
Section 25 of the Rental of Residential
Property Act (the "Act") filed by Aaron &
Tanya Parks and James (Jamie) Larkin
against Order LD19-325 dated August 1, 2019
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Thursday, the 12th day of September,
2019.

John Broderick, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of appeals filed under Section 25 of the Rental of Residential Property Act (the "Act") filed by Aaron & Tanya Parks and James (Jamie) Larkin against Order LD19-325 dated August 1, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On August 12, 2019 the Commission received a Notice of Appeal from two lessors, Aaron Park and Tanya Park (the "Lessors"), requesting an appeal of Order LD19-325 dated July 31, 2019 issued by the Director of Residential Rental Property (the "Director").

On August 21, 2019 the Commission received a Notice of Appeal from a lessee, James (Jamie) K. Larkin (the "Lessee"), requesting an appeal of the same Order (Order LD19-325 dated July 31, 2019) issued by the Director.

By way of background, on April 11, 2019 the Lessors filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement believing that a condition of the rental agreement had not been complied with and that rent is owing.

The matter was heard by the Director on July 29, 2019 and in Order LD19-325 the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessee shall pay to the lessors the sum of \$366.07 on or before August 30, 2019."*

The Commission heard the appeals on August 26, 2019. The Lessors were both present. The Lessee was also present. Greg Lipton ("Mr. Lipton") testified for the Lessee.

EVIDENCE

The Lessors testified that they needed to move out of the Province. They attempted to sell their home. The home did not sell, they took their home off the market and listed it for rent. Mr. Lipton, who was their real estate agent, agreed to assist them. They rented their home to two persons for a total of \$1700.00 per month. The Lessee's portion of the rent was \$850.00.

The Lessors testified that they later became aware of others living there, without the Lessors' consent, who paid rent to the Lessee. They also became aware of the garage being rented out for the storage of cars belonging to yet another person. The Lessors did not consent to the rental of their garage either. They explained that having the extra people in their home would violate their home insurance. They issued eviction documents to all of the occupants including the Lessee. The Lessee moved out of the premises on April 30, 2018.

The Lessors told the Commission that they have filed a court action against the Lessee and Mr. Lipton.

The Lessors seek from the Commission compensation for \$366.07 in furnace oil, May's rent in the amount of \$850.00 and half of the May 2018 electricity bill in the amount of \$70.45.

The Lessors had filed an April 11, 2018 Form 2 claiming the items in the above paragraph as well as a \$7.00 service charge for a "bounced" cheque (May 2018) and \$102.35 for changing the locks.

At the hearing before the Commission the Lessors spoke of damage to a refrigerator, a pocket door and to some chairs. They state that they offered to file a Form 8 but claim that they were told not to do so.

The Lessee testified that he had rented out his own apartment to another person who defaulted on the rent. In order to continue to pay his rent to the Lessors he rented spare rooms to others. He did not receive any rent money for May 2018. He acknowledged that he owed \$366.07 for oil and that should come out of the security deposit.

Mr. Lipton read into the record a prepared statement speaking to his involvement in this matter.

DECISION

The Commission denies both appeal LR19047 and appeal LR19051 and confirms Director's Order LD19-325.

The Commission agrees with the reasoning of the Director in Order LD19-325.

Appeal LR19047

The Lessors served a Form 4 Notice of Termination by Lessor of Rental Agreement dated April 27, 2018 specifically addressed to the Lessee. This Form 4 informed the Lessee that he must vacate the premises on or before May 31, 2018. The Lessee vacated the premises on April 30, 2018.

As the Lessee complied with the Form 4 and promptly moved out at the end of April 2018, the Lessors, who initiated the termination of the rental agreement, cannot claim rent from the Lessee under the **Act** for the month of May 2018.

Likewise, the Lessors cannot make a claim under the **Act** for electricity against the Lessee for the month of May 2018 as the Lessee moved out at the end of April 2018. For the same reason, the Lessors cannot make a claim for the NSF charge as it pertained to a May 2018 cheque they attempted to cash.

Appeal LR19051

With respect to claims against the security deposit, the Lessors have not filed a Form 8 Notice of Intention to Retain Security Deposit and there is no evidence that the Lessee had requested the Director to demand that the Lessors file a Form 8.

Accordingly, the disbursement of the security deposit funds has yet to be determined and thus the cost of filling the oil tank, \$366.07, cannot be paid out of the security deposit.

As a failure to pay for the oil is in contravention of the September 27, 2017 Lease Addendum, the Lessee is responsible to pay the sum of \$336.07 for furnace oil as directed in Order LD19-325.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

IT IS ORDERED THAT

1. **Appeals LR19047 and LR19051 are denied.**
2. **Director's Order LD19-325 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **12th** day of **September**, 2019.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(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.