



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

**Dockets LR19034 and
LR19037
Order LR19-32**

IN THE MATTER of appeals filed under
Section 25 of the Rental of Residential
Property Act (the "Act") by David McQuaid
against Orders LD19-275 & LD19-276 and by
Douglas MacArthur against Order LD19-276
issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 20th day of September, 2019.

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 appeals filed under Section 25 of the Rental of Residential Property Act (the "Act") by David McQuaid against Orders LD19-275 & LD19-276 and by Douglas MacArthur against Order LD19-276 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On July 23, 2019 the Commission received a Notice of Appeal from a lessee, David McQuaid ("Mr. McQuaid"), requesting an appeal of Orders LD19-275 and LD19-276 both dated July 2, 2019 and issued by the Director of Residential Rental Property (the "Director").

On July 24, 2019 the Commission received a Notice of Appeal from a lessor, Douglas MacArthur ("Mr. MacArthur"), requesting an appeal of Order LD19-276 dated July 2, 2019 and issued by the Director.

ORDER LD19-275

By way of background, on January 16, 2019 Mr. McQuaid filed with the Director a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit dated January 15, 2019 signed by Mr. MacArthur.

The matter was heard by the Director on June 24, 2019 and in Order LD19-275 the Director ordered:

"IT IS THEREFORE ORDERED THAT

- 1. The lessor shall receive the security deposit funds in the amount of \$1,504.45 held in trust with the Office of the Director of Residential Rental Property.*
- 2. Payment to the lessor shall be made after the appropriate appeal period has expired."*

ORDER LD19-276

By way of background, on February 7, 2019 Mr. MacArthur filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated February 6, 2019 believing that 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 June 24, 2019 and in Order LD19-276 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessee shall pay to the lessor \$3,195.55 on or before July 26, 2019.”*

The Commission heard both appeals on September 4, 2019. Mr. McQuaid appeared in person and was represented by Duncan Sturz (“Mr. Sturz”). Mr. MacArthur appeared in person along with Bev MacArthur (“Ms. MacArthur”) and was represented by Joel Wonnacott (“Mr. Wonnacott”).

EVIDENCE

Mr. Sturz submitted that there was a breach of statutory condition 9 in that the heating system was not functioning properly. Mr. Sturz testified that although text messages are not contemplated by the **Act**, a text message provides a form of written notice.

Mr. McQuaid testified that he paid a security deposit plus first and last month’s rent. He moved in a few days before November 1, 2018. Rent was \$1500.00 per month. He had agreed to rake the leaves and had it half done when winter arrived early in mid November. He had some concerns that made him feel like he was a property manager. His primary concern was heat and he provided the Commission with details on this concern. He noted the increase in the electricity bill due to the need to run three heaters.

Mr. McQuaid testified that he sent a text message to Mr. MacArthur on the evening of December 31, 2018. It was his intent to be out of the premises by February 1, 2019. He spoke with Mr. MacArthur on the telephone on January 5, 2019 and was advised to return the keys and that Mr. MacArthur’s lawyer would be involved. Mr. McQuaid vacated the premises on January 7, 2019 and did not have time to fully clean the premises. He provided the keys to Mr. MacArthur’s lawyer’s office at 8:30 a.m. the next morning.

Mr. McQuaid testified that he moved to his present residence while it was still under construction which was inconvenient for him due to the dust and construction debris.

Mr. Wonnacott noted that the **Act** requires 60 days notice for termination of a fixed term rental agreement. He submitted that the **Act** requires a specific form of notice.

Mr. MacArthur testified that he and Ms. MacArthur carefully select a tenant to occupy their home while the MacArthurs are in Florida. Their primary concern is that the tenant looks after their home. Mr. MacArthur testified that he was surprised when he received the December 31, 2018 text. He sought but did not receive clarification. He understood that Mr. McQuaid was vacating their home immediately. He attempted to reach Mr. McQuaid by telephone and was ultimately successful on January 5, 2019 at which time he was advised by Mr. McQuaid that he had vacated the house. Mr. MacArthur testified that he wanted the keys returned immediately through his lawyer’s office.

Mr. MacArthur testified that the heating system had been replaced a few years ago, it was well maintained and that there was only an airlock issue affecting one room which was identified and corrected in early December 2018.

Mr. MacArthur testified that his lawyer advised him of his duty to mitigate. He placed ads in Kijji and the local newspaper. There was no response to the newspaper ads which ran for a month. He received several responses to the Kijji ads which ran for 2 months and detailed the responses in his testimony. He ended the Kijji ads in early March 2019 as it was apparent that most prospective tenants were seeking a 12-month lease and, at that point, their home could only be rented for 2 more months.

Mr. MacArthur acknowledged that he and Ms. MacArthur returned to their home in early May 2019.

DECISION

The appeal of Director's Order LD19-275 (security deposit) is denied and that order is upheld.

The appeal of Director's Order LD19-276 (rent owing) is allowed and said Order varied as the Director erroneously omitted the cost of electricity and heating oil for the January to April 2019 period. The Commission varies Order LD19-276 to require the lessee to pay the lessor the sum of \$3,570.47 for rent owing, including heating oil and electricity, as Mr. McQuaid was required under the rental agreement to bear the cost of heat and electricity for the home during the term of the rental agreement (November 2018 to May 2019). Electricity and heating oil is not allocated for the month of May 2019 as Mr. MacArthur had moved back into his home in early May 2019.

The following is the form of notice to be used by a lessee to terminate a rental agreement:

FORM 3

NOTICE OF TERMINATION BY LESSEE OF RENTAL AGREEMENT

*(Pursuant to section 11 or clause 15(3)(a) of the
Rental of Residential Property Act
and section 5 of the regulations)*

TO:

{Lessor}

OF:

.....

.....

{Address}

*I HEREBY give you notice that on the day of,
20, I am giving up possession of the residential premises located at*

..... ,

Prince Edward Island, which I hold from you as Lessee.

DATED this day of

..... , 20.....

Signature:

{Lessee}

The following is the notice issued by Mr. McQuaid via text message:

Dec 31 AT 10:20 PM

D This is my notice that I am vacating your house at North River Road effective immediately.

The Commission finds that Form 3 requires both a date of notice and a date the lessee is giving up possession. The only date associated with the text message notice is December 31 (presumably 2018).

Mr. MacArthur sought clarification from Mr. McQuaid via text message. Mr. MacArthur did not receive such clarification.

Given the plain meaning of “effective immediately”, the request for clarification and the lack of response, a reasonable person would interpret the notice to mean Mr. McQuaid was vacating the house on December 31, 2018. While Mr. McQuaid may have intended otherwise, he did not communicate any such intent.

Mr. McQuaid vacated the house on January 7, 2019 and returned the keys at the earliest reasonable opportunity thereafter.

Mr. McQuaid claimed deficiencies with the heating system. He has failed to prove on the civil standard of the balance of probabilities that the heating system was deficient.

The Commission finds that Mr. MacArthur followed the advice of his lawyer and made reasonable efforts to mitigate the matter by attempting to find a new short term tenant. This was unsuccessful.

Mr. McQuaid initially paid a \$1500.00 security deposit plus the first and last month’s rent. Mr. MacArthur testified that the cheque for January 2019 rent cleared. There is no indication that December’s rent was not paid. Mr. MacArthur testified that he and Ms. MacArthur moved back into their home in early May 2019. Thus, the prepaid last month’s rent would apply to April 2019, leaving rent owing for the months of February and March 2019 in the combined amount of \$3000.00.

The \$1500.00 security deposit, with interest, totals \$1504.45. The Director awarded a claim of \$200.00 for cleaning. This leaves the sum of \$1304.45 of the security deposit which may be applied to rent. \$1695.55 of rent remains to be paid; however, the sum of \$220.30 for electricity during the January to April 2019 period and \$1654.62 for heating oil for the same period must be added for a total owing of \$3,570.47.

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 of Director’s Order LD19-275 is denied and said Order is confirmed.
2. The appeal of Director’s Order LD19-276 is allowed and said Order is varied.
3. The lessee David McQuaid shall pay the lessor Douglas MacArthur the sum of \$3,570.47, said sum to be paid on or before October 31, 2019.

DATED at Charlottetown, Prince Edward Island, this **20th day of September, 2019.**

BY THE COMMISSION:

(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.