



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

**Docket LR19069  
Order LR20-03**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act (the "Act") by Brenda White against Order LD19-479 dated November 1, 2019 and issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Thursday, the 6th day of February, 2020.

M. Douglas Clow, Vice-Chair  
Erin T. Mitchell, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

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# Order

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On November 21, 2019 the Commission received a Notice of Appeal from a lessor, Brenda White (the "Appellant"), requesting an appeal of Order LD19-479 dated November 1, 2019 issued by the Director of Residential Rental Property (the "Director").

## **BACKGROUND**

By way of background:

- (a) On August 15, 2019 a lessee, Ashlee Ramsay ("Ms. Ramsay"), on behalf of herself and another lessee, Rhyan Ramsay ("Mr. Ramsay") (collectively the "Respondents") 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 signed by the Appellant dated August 8, 2019.
- (b) On August 19, 2019 the Director wrote to the Appellant enclosing a copy of the Form 9 and requested that the Appellant forward to her the security deposit funds, plus interest, in the amount of \$939.55.
- (c) On August 28, 2019, the Appellant paid to the Director the sum of \$939.55 representing the security deposit plus interest.

The matter was heard by the Director on October 22, 2019 and in Order LD19-479 dated November 1, 2019 the Director ordered:

***"IT IS THEREFORE ORDERED THAT***

1. *The lessees shall receive the security deposit funds in the amount of \$939.55 currently held in trust with the Office of the Director of Residential Rental Property.*
2. *Payment shall made after the expiration of the appropriate appeal period."*

The Commission heard the appeal on February 3, 2020. The Appellant was present. Ms. Ramsay was present on behalf of the Respondents. Ms. Ramsey was accompanied by Kim Scott.

## EVIDENCE

The Appellant testified that the tenancy began on June 8, 2015 and ended on July 31, 2019. The Appellant stated that the rent was \$900.00 per month. She stated that she considered the fair value of the rent to be \$1200.00 per month but reduced the rent by \$300.00 in exchange for the Respondents providing labour for several improvements to the property.

The Appellant referred to various damaged and missing items in her testimony and in the documentation on file with the Commission.

The Appellant testified that she sold the property to a third party with a closing date of August 1, 2019. The Appellant acknowledged that the purchaser did not ask her to drop the price.

The Appellant referred to a February 3, 2020 email from her real estate agent (part of Exhibit E-20):

*... The average selling price for your home would be approximately \$300k. Given the condition of the Home, I would recommend somewhere between the low end \$270k and the midland [sic] \$290k. I recommend the selling price of \$280k.*

The Appellant testified that she noticed the damaged and missing items on the Friday or Saturday before the closing date. She did not do a walk-through with the Respondents as they refused to do a walk-through.

The Appellant is seeking to retain the entire security deposit.

Ms. Ramsay testified that the Respondents took over the lease from the previous tenants. Ms. Ramsey referred to a May 31, 2019 letter from the Appellant (part of Exhibit E-21) stating in part:

*I would like to express my gratitude for your care and concern of the property at 701 Darlington Road. I believed your occupancy reflected on your care as if it were truly "Your Home".*

Ms. Ramsay also provided in evidence a January 28, 2020 statement signed in the presence of a notary from one of the purchasers of the property. The statement itemized some deficiencies which the purchasers attended to themselves. The statement noted that they made an offer in May 2019 which was accepted by the Appellant and there was no reduction of the purchase price. The statement noted that nothing in the house was replaced or fixed by the Appellant since August 1, 2019 and there was no exchange of money for repairs.

Ms. Ramsay testified that when the Respondents moved into the property in 2015 that the oil tank was empty. She also testified that there was no lock on the upstairs door leading to the deck. The Respondents purchased and installed a lock for the safety of their children and removed this lock prior to moving out of the property.

Ms. Ramsay provided an unsigned, undated statement, purportedly from one of the previous tenants describing the condition of the property in 2014-2015 (part of Exhibit E-21).

Ms. Ramsay testified that the Respondents replaced the roof of the property. She testified that the Appellant paid for the materials but not the labour.

Ms. Ramsay testified that the Respondents did not refuse to do a walk-through with the Appellant.

## **DECISION**

The Commission denies the appeal and confirms Director's Order LD19-479.

As stated in Director's Order LD19-479, in a security deposit dispute the onus is on the lessor to establish that they have incurred a loss.

While the Appellant has submitted numerous quotations and estimates for various repairs, the evidence indicates that these repairs were not actually done.

On May 31, 2019 the Appellant wrote a letter wherein she was very complimentary as to how the Respondents had cared for the property. According to the January 28, 2020 statement from one of the purchasers, the offer to purchase the property was made and accepted in May 2019. There is no evidence before the Commission of a subsequent adjustment in the purchase price.

The Commission accepts the evidence of Ms. Ramsey that the oil tank was empty and there was no lock on the upstairs door when they moved into the property in 2015.

The Commission finds, on the balance of probabilities, that the Appellant has not incurred a loss and accordingly the appeal is denied.

**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 LD19-479 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this **6th** day of **February**,  
**2020**.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Erin T. Mitchell)

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Erin T. Mitchell, Commissioner

(sgd. Jean Tingley)

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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.*