



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20018
Order LR20-19**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Lisa Catania against
Order LD20-113 dated June 9, 2020 issued by
the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 14th day of August, 2020.

Erin T. Mitchell, Commissioner
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 Lisa Catania against Order LD20-113 dated June 9, 2020 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On June 29, 2020 the Commission received a Notice of Appeal from a lessee, Lisa Catania (the “Appellant”), requesting an appeal of Order LD20-113 dated June 9, 2020 issued by the Director of Residential Rental Property (the “Director”).

By way of background:

- 1) On May 13, 2020 two lessors, Clair McCarville and Kathy McCarville (collectively the “Respondents”), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking:
 - a. a finding that rent is owed; and
 - b. an order that an amount found to be owed be paid.
- 2) On June 4, 2020 the Respondents filed with the Director a Form 8 – Notice of Intention to Retain Security Deposit.

The matter was heard by the Director on June 5, 2020 and in Order LD20-113 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessors are entitled to retain the lessee’s security deposit, and interest thereon, for rent owing in the amount of \$1,204.85.*
2. *The lessee shall pay to the lessors the sum of \$5,563.28 on or before July 10, 2020.”*

The Commission heard the appeal on August 12, 2020 by way of telephone conference in order to meet current social distancing requirements due to the COVID-19 pandemic. The Appellant participated by telephone. The Respondent Kathy McCarville (“Ms. McCarville”) also participated by telephone.

EVIDENCE

The Appellant testified at length as to her understanding as to what happened between the parties from January 2020 when she moved in until May 2020 when she vacated the residential premises. Her testimony gave particular emphasis on her assertion that she felt harassed for the duration of her tenancy, and her claim that the Respondents intentionally shut off her utilities on two separate occasions.

Ms. McCarville testified as to her understanding of what happened during the duration of the tenancy.

The Commission listened to the testimony of both parties. The testimony of both parties was recorded, as is the Commission's usual practice, to ensure a complete record of the hearing.

DECISION

The Commission denies the appeal and confirms the decision of the Director, subject to a variance to reduce the total sum ordered by \$150.00 to reflect a further adjustment for poor Bell internet and television service.

The ***Rental of Residential Property Act*** ("the ***Rental Act***") is the statute which pertains to residential landlord and tenant matters in the Province of Prince Edward Island. The various residential landlord and tenants statutes of other Canadian Provinces do **not** apply.

The following provisions of the ***Rental Act*** are germane to this appeal:

STATUTORY CONDITIONS

6. Residential premises

Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:

...

2. Services

Where the lessor provides or pays for a service or facility to the lessee that is reasonably related to the lessee's continued use and enjoyment of the premises, such as heat, water, electric power, gas, appliances, garbage collection, sewers or elevators, the lessor shall not discontinue providing or paying for that service to the lessee without permission from the Director.

...

8. Enforcement

Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the

Director shall investigate the matter and may

...

(d.1) make a finding that an amount of rent is owed or that a security deposit, or part thereof, should be forfeited or returned;

(d.2) order that an amount found to be owed be paid;

...

While it may be viewed as trite law, the following principles are clearly enunciated so that both parties understand not only their rights, but also their responsibilities:

- A lessee (tenant) must pay their rent;
- A lessor (landlord) must provide the services specified in the rental agreement (lease). The rental agreement may be written or oral.
- In the event a lessee fails to pay their rent, the lessor must apply to the Director for a remedy per section 6, condition 8.
- In the event a lessor fails to provide a specified service, the lessee must apply to the Director for a remedy per section 6, condition 8.
- A lessee must not withhold rent.
- A lessor must not withhold a specified service.

In the present appeal, the evidence supports a finding that the Appellant withheld rent. There is no evidence that the Appellant applied to the Director for a remedy with respect to the concerns she stated at the hearing. While the Appellant spoke of her “rights”, the **Rental Act** requires a lessee to meet their responsibilities, the most fundamental of which is to pay the rent.

The Respondent did apply to the Director for a remedy for unpaid rent and utilities.

Both parties acknowledged issues with the Bell television and internet services. The Director had reduced this amount from \$250.00 to \$150.00. The Commission further reduces the amount owing for said Bell services to \$0.

As there is no evidence before the Commission that the Appellant paid her rent for the months of February to May 2020 inclusive, the Commission confirms Director’s Order LD20-113, subject to a small adjustment in the Appellant’s favour, that is to say a reduction of \$150.00 as explained in the paragraph above.

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. **Subject to a variance, in the total sum ordered, specifically a reduction of \$150.00, Director’s Order LD20-113 is confirmed.**
3. **The Respondents (lessors) are entitled to retain the lessee’s security deposit, and interest thereon, for rent owing in the amount of \$1,204.85.**
4. **The Appellant (lessee) shall pay to the Respondents (lessors) the sum of \$5,413.28 on or before September 14, 2020.**

DATED at Charlottetown, Prince Edward Island, this **14th** day of **August**, **2020**.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, 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.