



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR20009  
Order LR20-23**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act filed by against Order LD20-080  
dated March 4, 2020 issued by the Director of  
Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 9th day of September,  
2020.

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

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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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## Introduction

The Appellant, Grant Moase (“Mr. Moase”), is claiming that he is owed rent plus additional damages relating to the storage of personal property that belonged to the Respondent, Jason Boyles (“Mr. Boyles”), which was left in the rental premises located at 100 Small Avenue in Summerside, PEI (the “Premises”) following the termination of a written, fixed-term agreement.

Mr. Moase alleges that Mr. Boyles failed to remove his personal property from the Premises in a timely fashion, causing him to incur costs in the form of labour, snow removal, costs to dispose of personal property, court registration, and sheriff’s fees. Mr. Moase further alleges that the Director failed to adjudicate his December 30, 2019 application seeking an order to dispose of Mr. Boyle’s personal property in a timely fashion, thereby contributing to his out-of-pocket expenses. Mr. Moase’s claims total \$4,723.02, which he seeks from either Mr. Boyles or from the Commission.

The matter was originally heard by the Director of Residential Rental Property (the “Director”) on February 27, 2020 (Order LD20-080) who ordered Mr. Boyles to pay to Mr. Moase the sum of \$1219.44 on or before April 10, 2020. This sum represented the total allowable claim for rent owing as determined by the Director. The Director denied Mr. Moase’s claim for damages.

On March 12, 2020 the Commission received a Notice of Appeal from Mr. Moase, requesting an appeal of Order LD20-080. The hearing of this appeal was delayed due to the closure of the Commission offices due to the COVID- 19 pandemic.

The Commission heard the appeal on June 29, 2020. Mr. Moase participated by telephone, along with his son, Matthew Moase. Mr. Boyles did not participate in the appeal, notwithstanding having been sent a letter, Notice of Hearing, and Proposed Exhibit List via email on June 22, 2020.

The Commission must determine whether rent is owing to Mr. Moase and if he should be paid rent for the time that the property remained in the premises. The Commission will also determine whether the actions of the Director caused or contributed to the expenses incurred by Mr. Moase.

## Analysis

### 1. Is rent owing?

It remains undisputed that Mr. Boyles did not pay rent for the month of December, 2019. The rental agreement was terminated effective December 23, 2019 pursuant to Order LD 19-533. The Commission confirms the Director's findings that rent is owing but calculates the amount owing for December 1 to December 23 as being \$1,215.91 ( $[(\$1,608 * 12)/365]*23$ ).

The Commission notes that the Director awarded Mr. Moase an additional \$26.43 for a half day's rent, following a finding that Mr. Boyles had possession of the Premises for part of the day on December 24, 2020. As this finding was also undisputed, the Commission confirms the additional award of \$26.43.

### 2. What happened to the December 30, 2019 Application?

Mr. Moase filed a Form 2 on December 30, 2019 (the "December 30 application") seeking an order to dispose of the Mr. Boyles' personal property, but alleged that the Director had failed to hear or adjudicate the application in a timely manner. Mr. Moase stated that as of the hearing of this appeal, he had yet to receive a written order relating to the December 30 application. The thrust of his claim on appeal is that the failure of the Director to either adjudicate the December 30 application, or to interpret Order LD 19-533 as having given him full rights to the premises, incurred costs for which he seeks reimbursement from either Mr. Boyles or the Commission.

The Director is not a named party to appeals pursuant to the Rental of Residential Property Act, nor is it customary for the Director to appear as a witness in appeal hearings. In light of the allegations made by Mr. Moase, the Commission felt it was necessary to hear from the Director. As such, and with notice to Mr. Moase and Mr. Boyles, on June 29, 2020 the Commission sought a written submission from the Director to respond to Mr. Moase's allegations of inaction on the December 30 application. The Director filed a submission with the Commission on July 15, 2020. The parties were provided the Director's submission, and were invited to submit a reply. Only Mr. Moase chose to do so.

In her written submission, the Director stated that the December 30, 2019 application was dealt with in a timely fashion. The Director stated that Mr. Moase, his son Matthew, and Mr. Boyles were all in touch with the Office of the Director on a regular basis throughout the month of January 2020, and the Director was attempting to work with the parties to bring resolution to the matter. The Director stated that the contents of the home were not initially abandoned by Mr. Boyles. In fact, she stated that Mr. Boyles was actively trying to remove the belongings and at times, being thwarted in his efforts to do so by the Moases. The Director further stated that the "contents were not abandoned until January 29, 2020 and therefore an Order to dispose was not appropriate until that date."

With respect to the matter of a hearing, the Director stated:

*On January 29, 2020, the Director heard the matter over the telephone, took the evidence of the lessor's representative, Matthew Moase, verbally rendered a decision "to allow the balance of the belongings to be donated or deemed to be of no value and disposed of except the 3 chairs...Order to follow"... A "draft" Order (dated and prepared on March 19, 2020) confirming the January 29, 2020 verbal decision of the Director was not finalized due to the Covid 19 Pandemic. The Order will be issued and is simply a paper version of the verbal decision previously rendered on January 29, 2020.*

In his written submission, Mr. Moase also detailed the numerous contacts that occurred between the parties throughout the month of January, and acknowledged that "on the 29th [of January] [the Director] issued the verbal disposal of contents for the form 2 filed December 30th". This statement contradicts the verbal assertion of Mr. Moase and his son during the appeal hearing that they did not consider that conversation to be resolution of the December 30 application.

The Commission finds that that throughout the month of January 2020, Mr. Moase, Mr. Boyles, and the Director were in regular communication as to the disposition of the personal property, and that Mr. Boyles made several attempts to recover the property. The Commission therefore agrees with the Director's view that the property was not abandoned prior to January 29, 2020. The communication between the parties and the Director do not support the inference that the property had been abandoned, as required by the Act.

The Commission further notes that Mr. Moase acknowledged in his written submission that he was directing the manner by which Mr. Boyles could recover the property, the result of which prevented Mr. Boyles from doing so in a timely manner. This was corroborated in the submission of the Director.

As such, the Commission finds that the December 30 application was adjudicated on January 29, 2020.

The Commission is nevertheless concerned with the practice articulated by the Director pertaining to applications for disposal of property. Section 28(3) of the Act permits such applications to be made without notice to third parties; it is therefore important that there be timely, written confirmation of the Director's decisions so as to provide certainty to the parties. The Commission therefore recommends that the Office of the Director ensure that written orders disposing of personal property be issued as soon as is practicable, and certainly before 2-6 weeks have elapsed from the date of the hearing, as the Director has advised is the current practice.

### **3. Can rent be claimed for personal property being left behind?**

The rental agreement between the parties was terminated on December 23, 2019 (Order LD 19-533). Mr. Moase testified that he felt that the issuance of that order was not effective in giving him possession of the property. He stated that Mr. Boyles' personal property was left in the premises, and both deprived Mr. Moase of the use of the property until the end of January, 2020, and cost the Appellant in the form of labour, snow removal, costs to dispose of the personal property, and court registration and sheriff's fees.

Section 28 of the Act pertains to property left by a lessee in a rental premises, and reads (in part) as follows:

28. (1) *The lessee is not entitled to leave personal property in the residential premises after the rental agreement has terminated.*

(2) *Where a lessee has abandoned or apparently abandoned personal property in the residential premises after the rental agreement has terminated, the lessor may apply in the form prescribed by regulation to the Director for an order with respect to disposal of the property.*

...

(4) *The Director, in an application pursuant to subsection (2), may make such order as he deems fit in the circumstances.*

The Act does not include provisions that deem when a lessee has abandoned property. The Commission finds that the Appellant followed proper procedure in making the December 30 application for disposition of the Respondent's property.

The Commission finds that the circumstances of this case do not render Mr. Boyles an "overholding lessee", as is contemplated in section 19 of the Act. That discussions were ongoing between the parties throughout the month of January 2020 to arrange for the removal of the property, and the fact that Mr. Boyles decidedly did not have use and occupation of the Premises, precludes Mr. Moase from relying on this section to recover his alleged costs.

#### **4. Can Mr. Moase recover his costs?**

The Commission finds that the Rental of Residential Property Act does not permit for the award of damages above and beyond the value of a security deposit. Neither the Office of the Director nor the Commission itself has jurisdiction to award amounts beyond those articulated in the Act. If Mr. Moase wishes to pursue his claim against Mr. Boyles, he will have to do so in the Supreme Court of Prince Edward Island.

### **Conclusion**

The Commission therefore orders that Mr. Boyles shall pay to Mr. Moase the sum of \$1,242.34 for rent owing. The balance of the claims made by Mr. Moase are 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 LD20-080 is confirmed, subject to an adjustment in the calculation of rent owing to \$1,215.91. To this sum, a half day's rent of \$26.43 is added for a total rent owing claim of \$1,242.34.**
3. **The Respondent Mr. Boyles shall pay the Appellant Mr. Moase the sum of \$1,242.34, said sum due upon the expiry of the appeal period.**

**DATED** at Charlottetown, Prince Edward Island, this **9th** day of **September**, **2020**.

**BY THE COMMISSION:**

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(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

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(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

## **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.*