



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR20019
Order LR20-24**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Neil Lawless and Darlene Lawless against Order LD20-159 dated July 10, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 18th day of September, 2020.

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 an appeal filed under Section 25 of the Rental of Residential Property Act by Neil Lawless and Darlene Lawless against Order LD20-159 dated July 10, 2020 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On July 30, 2020 the Commission received a Notice of Appeal from two lessors, Neil Lawless and Darlene Lawless (collectively the “Appellants”), requesting an appeal of Order LD20-159 dated July 10, 2020 issued by the Director of Residential Rental Property (the “Director”).

By way of background on May 20, 2020 the Appellants filed with the Director a Form 2 - Application for Enforcement of Statutory of Other Conditions of Rental Agreement believing that a condition of the rental agreement has not been complied with and seeking remedy by way of:

- 1) a finding that rent is owed; and
- 2) an order that an amount found to be owed be paid.

The matter was heard by the Director on June 29, 2020 and in Order LD20-159 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessee shall pay to the lessors the sum of \$3,691.66 on or before August 10, 2020.”*

The Commission heard the appeal commencing September 14, 2020 by way of telephone conference in order to meet current social distancing requirements. Due to time constraints faced by the Respondent, the hearing was adjourned to September 16, 2020 with the majority of the hearing occurring on that day. The Appellant, Neil Lawless (“Mr. Lawless”) participated by telephone. Bobby Burns (the “Respondent”) also participated by telephone.

EVIDENCE

The Appellant gave a very lengthy and detailed presentation which is part of the audio record before the Commission.

The Appellant referenced additional documentation [Exhibit E-7, pages 176 to 239] which had not been provided to the Director. The Appellant explained that he had run Kijji advertisements for the unit on both an unheated and heat included basis using his separate Kijji accounts. The documentation in Exhibit E-7 contained evidence of Kijji advertisements for the unit as heated for \$1505.00 per month, that is to say the same terms as the Respondent's rental agreement.

The Appellant also referenced and explained his heating oil calculations [see Exhibit E-4, page 165] which reflected the very low heating oil prices associated with the COVID-19 lockdown in March and April 2020. He stated that his initial unheated offered rental rate was \$1400.00 per month, revised in March / April 2020 to \$1450.00 per month, given the very significant drop in furnace oil prices at that time.

The Appellant explained that the phrase "work with him" was a figure of speech and the Appellant's concern was to take steps to re-rent the unit swiftly on fair and reasonable terms.

The Respondent testified that he had seen advertisements for the unit as high as \$1605.00; however, he did not provide documentary evidence of this to the Commission, such as printouts of Kijji advertisements. He stated he received advice to cancel his cheques from the Director's Office, but he could not identify who he spoke with. He stated that the Appellant never asked to "work with him". He stated that he moved out of the unit in early December 2019 and provided the Appellant with the keys to the unit.

DECISION

The appeal is allowed in part and Director's Order LD20-159 is varied.

The Commission finds that new evidence contained in Exhibit E-7 establishes that the Appellant attempted to mitigate by offering the unit for rent in Kijji advertisements for both heated at \$1505.00 per month, exactly the same terms as the Respondent had rented the unit, and unheated: at first \$1400.00 per month, later revised to \$1450.00 per month.

The Commission notes that the Director did not have the benefit of this new evidence. As an appeal before the Commission under the ***Rental of Residential Property Act*** is an appeal by way of rehearing, the Commission is able to consider this evidence which was not before the Director.

Accordingly, the Commission finds that the Respondent owes the Appellant rent for four months, that is to say January 2020 to April 2020 inclusive in the amount of \$6,020.00 [$\1505.00×4].

With respect to the cost of electricity, snow shoveling and contracted driveway snow removal, the Commission notes that the Respondent had vacated the unit, handed over the keys to the Appellant and the Appellant had accepted the keys. The Respondent had thus surrendered possession of the unit. The Commission declines to make an award for these additional items.

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 allowed in part.
2. Director's Order LD20-159 is hereby varied to read:

"The lessee shall pay to the lessors the sum of \$6,020.00 on or before October 31, 2020."

DATED at Charlottetown, Prince Edward Island, this 18th day of September, 2020.

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.