



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20031
Order LR20-36**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act *filed by Fabio Anderson Caires
De Matos and Maria Clara De Souza Pereira*
against Order LD20-206 dated August 11,
2020 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 18th day of November,
2020.

Erin T. Mitchell, Panel Chair & Commissioner
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 under Section 25 of the Rental of Residential Property Act filed by *Fabio Anderson Caires De Matos* and *Maria Clara De Souza Pereira* against Order LD20-206 dated August 11, 2020 issued by the Director of Residential Rental Property.

Order

This appeal asks the simple question of whether a tenant owes a landlord unpaid rent and the cost of furnace oil.

Background

The Appellants, Fabio Anderson Caires De Matos (“Mr. De Matos”) and Maria Clara De Souza Pereira (the “Appellants”), rented a house from the Respondent, Rodrigo Visintin (“Mr. Visintin”) located at 103 Russell Street, Summerside, PEI (the “Premises”). They moved in on September 14, 2019, and rent was due on the 14th day of each month. The Appellants informed Mr. Visintin in mid-June 2020 that they intended to move out the Premises. The parties mutually agreed that the Appellants would vacate the Premises on July 2, 2020. Mr. Visintin advised the Appellants that the rent due for the period June 14, 2020 to July 2, 2020 would be \$660. Mr. Visintin advised the Appellants that the oil tank was to be filled to $\frac{3}{4}$ level, which was the same as when they moved into the Premises. The Appellants did not pay the rent or fill the oil tank.

On July 15, 2020, Mr. Visintin filed with the Director of Residential Rental Property (the “Director”) an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking a finding that rent is owed in the amount of \$660 plus the cost of furnace oil in the amount of \$244.44.

The Director heard the matter on August 7, 2020, and in Order LD20-206 ordered that the Appellants pay to Mr. Visintin the sum of \$904.44, representing rent owing for the period of June 14, 2020 to July 2, 2020, and the cost of furnace oil.

The Appellants appealed.

The Commission heard the appeal on November 12, 2020, via telephone conference call. Mr. De Matos represented the Appellants and called Pedro Macedo (“Mr. Macedo”) as a witness. Mr. Visintin represented himself.

Disposition

The appeal is denied and Director's Order LD20-206 is confirmed. The Appellants shall pay the Respondent the sum of \$904.44 (\$660 plus \$244.44) no later than 15 days following the date of the Commission's Order.

The Issues

The Commission will consider the following questions in determining this appeal:

1. Is rent owing?
2. Is the cost of furnace oil owing?

Is Rent Owing?

Mr. De Matos testified that he was of the understanding that the first two weeks rent was free as, though the Appellants had hoped to move in on September 4, 2019, they only took possession of the Premises in mid-September.

Mr. Macedo testified that he and his wife were having lunch with the Appellants and he was asked to be a witness to the signing of the rental agreement. Mr. Macedo testified that he also understood that rent would not be charged for the first two weeks of September 2019.

Mr. Visintin testified that he never had promised the Premises for September 4, 2019. Mr. Visintin told the Commission that he offered the Premises to the Appellants for September 14, 2019. He testified that as the Appellants had paid the security deposit they could start paying the monthly rent on October 1, 2019. He stated that paying the monthly rent starting October 1, 2019, did not mean that the first two weeks were free. He explained that each monthly payment covered the period of the 14th of the month through to the 13th of the next month. He stated that the last payment made by the Appellants was for May 14, 2020 to June 13, 2020, but the Appellants did not move out until July 2, 2020. Accordingly, he is seeking rent in the amount of \$660 for the period of June 14, 2020 to July 2, 2020.

The Commission is mindful of the text message of August 19, 2019 [page 32 of the file record], which establishes that Mr. Visintin offered a move-in date of the weekend of September 14 and 15, 2019.

The Commission finds that there is no new evidence to disturb the findings of the Director in Order LD20-206 pertaining to rent owing. Accordingly, rent is owing in the amount of \$660.

Is the Cost of Furnace Oil Owing?

A portion of the rental agreement [page 8 of the file record] states:

House provided with ¾ tank worth of oil and must be returned the same way.

Mr. Visintin testified that when the Appellants moved out of the Premises on July 2, 2020, there was only $\frac{1}{4}$ of a tank of furnace oil.

Mr. De Matos acknowledged that he did not fill the oil tank to $\frac{3}{4}$.

The Commission finds that there is no new evidence to disturb the findings of the Director in Order LD20-206 pertaining to the cost of furnace oil. Accordingly, the cost of furnace oil is owing in the amount of \$244.44.

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 and Director's Order LD20-206 is confirmed.**
2. **The Appellants (lessees) shall pay the Respondent (lessor) the sum of \$904.44 no later than 15 days following the date of this Order.**

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

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(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.