



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20043
Order LR21-04**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the Rental of *Residential Property Act* filed by Michel Ross and Christiane Gionet against Order LD20-348 dated November 26, 2020, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 27th day of January, 2021.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the Rental of Residential Property Act filed by Michel Ross and Christiane Gionet against Order LD20-348 dated November 26, 2020, issued by the Director of Residential Rental Property.

Order

The Commission is asked to determine, on the particular facts of this case, whether the Appellants are entitled to raise a new issue that was not previously argued before the Director.

Background

The appellants, Michel Ross (“Mr. Ross”) and Christiane Gionet (“Ms. Gionet”) (collectively the “Appellants”), verbally agreed to rent a house from the Respondent, Laura Lee Harding (“Ms. Harding”) at 17 Edinburgh Drive, Charlottetown, PEI (the “Premises”) commencing October 21, 2019.

On September 19, 2019, the Appellants paid the security deposit of \$2,700 to Ms. Harding.

On September 30, 2019, the Appellants advised Ms. Harding that they would not be moving into the Premises. No rent was paid to Ms. Harding.

On October 31, 2019, Ms. Harding served the Appellants with a Notice of Intention to Retain Security Deposit (“Form 8”), which stated that Ms. Harding would be retaining all of the security deposit for unpaid rent for the period October 21, 2019 to November 20, 2019.

On November 8, 2019, the Appellants filed with the Director of Residential Rental Property (the “Director”) a Form 9 – Application re Determination of Security Deposit dated November 8, 2019.

The Director heard the matter on November 5, 2020, and in Order LD20-348 ordered that Ms. Harding receive the security deposit in the amount of \$2,700.

Mr. Ross and Ms. Gionet appealed.

The Commission heard the appeal by telephone conference call on January 8, 2021. Mr. Ross appeared on behalf of the Appellants; Ms. Harding appeared on her own behalf.

The Issue

The sole issue raised by the Appellants in their Notice of Appeal is that the originating Form 8 was not signed by Ms. Harding. As such, Mr. Ross argues that she is not entitled to keep the security deposit as there was no service of a valid Form 8. This argument was not advanced by the Appellants before the Director.

The balance of the findings made by the Director in Order LD20-348 were not disputed by the Appellants and will not be examined by this Commission.

Analysis

The parties both agreed at the hearing of this appeal that Ms. Harding e-mailed the Appellants (and copied the Commission) on October 31, 2019, with a PDF of the unsigned Form 8 attached. Mr. Ross responded to her e-mail on the same day, stating:

Hi Laura Lee,

We also contacted the Island Regulatory and Appeals Commission. After explaining the situation, they suggested that we file a form 2. The commission (sic) was supposed to send us the form which they din (sic) not done yet (we are still waiting for the form).

Kind regards,

Michel & Christiane

Mr. Ross did not object to the Form 8 at that time and did not raise the matter of the signature.

The Appellants submitted a Form 9 dated November 8, 2019, to challenge Ms. Harding's claim to the security deposit. The reasons given on the Form 9 do not include an objection to the unsigned Form 8.

The Director heard this matter on November 5, 2020. The matter of the signature was not raised by the Appellants at the hearing. Mr. Ross testified on appeal that he had planned to raise the issue at the hearing, but claimed he did not as the Rental Property Officer did first. He further claimed that the Rental Property Officer expressed concern that the Form 8 was not signed, and inquired as to why it was not signed. Mr. Ross said he was surprised that the hearing nevertheless proceeded and that Order LD20-348 did not address the signature issue.

The Commission reviewed the audio recording of the November 5, 2020 hearing.

The Rental Property Officer did confirm with Ms. Harding that she had prepared and e-mailed the Form 8 to Mr. Ross, but did not inquire specifically as to the matter of the signature. The hearing focussed on the matters detailed by Mr. Ross in the Form 9, such as the nature of the agreement between the parties, the lack of a written rental agreement, and what information was shared regarding the prospective tenants. These matters are all summarized in LD-20-348.

The first time that the Appellants – or anyone – specifically raised the issue of the lack of signature on the Form 8 was in the Notice of Appeal.

Nature of the Appeal

Subsection 26(1) of the *Rental of Residential Property Act* states that:

[a]n appeal to the Commission shall be by way of a re-hearing, and the Commission may receive and accept such evidence and information on oath or affidavit as in its discretion it considers fit and make such decision or order as the Director is authorized to make under this Act.

It is important to distinguish an appeal by way of “re-hearing” from an appeal “*de novo*”, which is generally considered a brand new hearing. As explained by Justice Bastarache in his dissenting judgment in *H.L. v. Canada*, 2005 SCC 25 (CanLII) (see paras. 173-179), an appeal by way of rehearing does not involve a completely fresh hearing. Instead, the Court “proceeds on the basis of the record and any fresh evidence that, exceptionally, it admits”. The Commission adopts this interpretation of “re-hearing”.

Thus, in conducting a re-hearing of the case currently before the Commission, we are required to consider the record – consisting of the evidence, submissions, and Order of the hearing before the Director – and any fresh evidence which the parties may have sought to enter on appeal.

The Appellants did not seek to enter any new evidence on appeal. The only “new” element was the ground of appeal relating to the unsigned Form 8.

Can the Appellants now raise the issue of the unsigned Form 8?

The Commission finds that the Appellants cannot now raise a new argument regarding the validity of the Form 8.

The facts are that the Appellants accepted the Form 8, challenged it by way of the Form 9, made substantive representations to the Director on whether the Respondent was entitled to retain the security deposit, and did not raise the issue of the signature from October 31, 2019 – when they received it by e-mail – to November 4, 2020 – when they argued their case before the Director. Taken together, these facts cause the Commission to find that the Appellants effectively accepted the defect in the Form 8.

The Appellants are estopped from now pleading that the Form 8 was invalid, as they acted throughout these proceedings (at least up until the filing of the Notice of Appeal) as though it was a valid and enforceable document.

Furthermore, and as discussed above, the appeal to the Commission is by way of re-hearing, which restricts the ability of the Appellants to introduce a brand new argument while essentially asking the Commission to ignore the submissions made by them before the Director and contained in the record.

DECISION

For these reasons, the Commission dismisses the appeal.

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 dismissed.
2. Order LD20-348 is confirmed.

DATED at Charlottetown, Prince Edward Island, this 27th day of January, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Subsections 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.