



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21013
Order LR21-10**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by David MacDonald against Order LD21-121 dated April 1, 2021, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 16th day of April, 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 David MacDonald against Order LD21-121 dated April 1, 2021, issued by the Director of Residential Rental Property.

Order

BACKGROUND

On April 8, 2021, the Commission received a Notice of Appeal from a lessee, David MacDonald (“Mr. MacDonald”), requesting an appeal of Order LD21-121 dated April 1, 2021, issued by the Director of Residential Rental Property (the “Director”).

Mr. MacDonald entered into a written rental agreement with George Dow (Mr. Dow) in December 2020 for the rental premises located at 70-1 Kent Street in Charlottetown, PE (the “Premises”).

On March 25, 2021, Mr. Dow filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”). The Form 2 stated that rent for March 2021 had not been paid. Mr. Dow sought an order that possession of the Premises be surrendered to him and directing the sheriff to put Mr. Dow in possession. Attached to the Form 2 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated March 3, 2021.

Mr. MacDonald did not file a Form 6 – Application by Lessee to Set Aside Notice of Termination.

The matter was heard by the Director on April 1, 2021, and in Order LD21-121 the Director ordered as follows:

“IT IS THEREFORE ORDERED THAT

- 1. The rental agreement between the parties for the Premises shall terminate effective **11:59 p.m. on April 8, 2021**. The Tenant and all occupants shall vacate the Premises by this time and date.*
- 2. A **certified copy** of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.”*

The Commission heard the appeal on April 14, 2021, by way of telephone conference call. The Appellant participated by telephone. Mr. Dow was represented by William F. Dow, Q.C. (counsel for Mr. Dow). Mr. Dow and his son, Joseph Dow, both gave evidence.

EVIDENCE

Mr. MacDonald acknowledged at the outset of the hearing that he had fallen behind in his rent. He stated that he had made arrangements with Mr. Dow to conduct a variety of renovations and repairs, compensation for which he understood could be put toward the rent. Mr. MacDonald stated that these arrangements had all been made “on a handshake” and provided no written evidence to support his assertions. Under questioning by counsel for Mr. Dow, Mr. MacDonald acknowledged that he has not paid rent for March or April, but maintained that he had offered to pay the rent and it was refused. Mr. MacDonald could not provide a date upon which he made this offer.

Mr. Dow and Joseph Dow both gave evidence that refuted Mr. MacDonald’s claims of an agreement to do renovations and repairs in exchange for a reduction in rent. They stated they did not ask him to do any work, and to their knowledge no work was completed.

They also testified that they had served Mr. MacDonald with a Form 4 on January 8, 2021, for non-payment of rent. Mr. MacDonald did pay January’s rent on the 19th of that month, and February’s was paid on February 3, 2021. They testified that no rent has been paid for either March or April 2021, and they have not had any calls or texts from Mr. MacDonald regarding the unpaid rent.

Mr. MacDonald alleged that the true reason Mr. Dow was evicting him was due to Mr. MacDonald’s reputation. The Form 2 and Form 4 make reference only to unpaid rent, and so the Commission only sought evidence and submissions in respect of the rent owing.

ANALYSIS

As stated, Mr. MacDonald acknowledged that rent for March and April 2021 has not been paid. The Commission agrees with the Director’s finding that there is no evidence to support Mr. MacDonald’s claim that his rent could be reduced in exchange for renovations and/or repairs to the Premises.

There is no evidence before the Commission to justify interfering with the decision of the Director. The Commission confirms the findings of the Director that rent is owing, that the Form 4 is valid, and that Mr. Dow is entitled to the order sought.

DECISION

The appeal is 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. Order LD21-121 is confirmed.

DATED at Charlottetown, Prince Edward Island, this 16th day of April, 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.