



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR05019  
Order LR06-02**

**IN THE MATTER** of an appeal, under  
Section 25 of the *Rental of Residential  
Property Act*, by Diana de Jonge of Order No.  
LD05-337 of the Director of Residential  
Rental Property, dated December 9, 2005.

**BEFORE THE COMMISSION**  
on Thursday, the 9th day of February, 2006.

Weston Rose, Commissioner  
Kathy Kennedy, Commissioner  
Anne Petley, Commissioner

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# Order

**IN THE MATTER** of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Diana de Jonge of Order No. LD05-337 of the Director of Residential Rental Property, dated December 9, 2005.

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## Participants

1. Appellant: Diana de Jonge  
Mr. Wolters
  
  2. Respondent: Donald MacAusland
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# Reasons for Order

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## 1. Introduction

Diana de Jonge (the Appellant) appealed Order LD05-337 (Exhibit E-8) issued by the Office of the Director of Residential Rental Property (the Director) on December 9, 2005. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-9) on December 28, 2005.

The Director's Order and the present appeal concern a rental unit located at 7678 Trans Canada Highway, Route 1, in Vernon Bridge (the unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday, January 16, 2006.

## 2. Background

On July 1, 2002 Francis MacAusland and Donald MacAusland (the Respondents) moved into the unit with a monthly rent of \$550.00 for the period of July 1, 2002 to June 30, 2003. On June 2, 2003 the Respondents were served with a Form 4 Notice of Termination, to be effective July 2, 2003. The Form 4 Notice alleged damage to the premises and property, not sorting garbage, dog problems and other concerns. The Appellant states that the Respondents approached her and agreed to pay rent in the amount of \$600.00 per month in order to continue renting the unit. The new rental payments commenced July 1, 2003. On June 24, 2005 the Respondents moved out of the unit.

On May 31, 2005 the Respondents filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement with the Director, pursuant to section 8(d.1) of the *Rental of Residential Property Act* (the *Act*). The Form 2 application alleged a rent increase above the allowable amount, totalling \$ 1,260.00.

The Director held a hearing on August 16, 2005 pursuant to section 4(2)(d) of the *Act*. On December 9, 2005, the Director, in Order LD05-337, ordered that the Appellant return rent to the Respondents in the amount of \$1,260.00. The Director also ordered that this payment be made on or before January 3, 2006.

## 3. Decision

The appeal is denied for the reasons that follow.

Section 1(n) of the *Act* defines rent:

*(n) "rent" means the amount of the consideration, whether or not in money, paid, given or agreed to be paid or given by a lessee to a lessor for occupancy of residential premises and for any service, privilege or thing that the lessor may provide for the lessee, whether or not a separate charge is made therefor;*

Sections 21, 22 and 23(1) and (3) of the *Act* read as follows:

*21. The rent payable for residential premises shall not be increased until twelve months have elapsed since the date of any previous increase or, in the case of residential premises not previously rented, the date on which rent was first charged. 1988,c.58,s.21.*

*22. Every notice of increase of rent for residential premises shall*

*(a) be in writing in the form prescribed by regulation; and*

*(b) be served on the lessee*

*(i) in the case of a weekly agreement, at least three weeks before the date on which it is to take effect,*

*(ii) in the case of a monthly agreement, at least three months before the date on which it is to take effect. 1988,c.58,s.22.*

- 23.** *(1) Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.*

...

*(3) Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee.*

Pursuant to section 1(n) of the **Act**, rent includes “*any service, privilege or thing that the lessor may provide for the lessee, whether or not a separate charge is made therefor;*”. Given the application and notice requirements contained in sections 21, 22 and 23(1) and (3) of the **Act**, the Commission finds that the Appellant was not legally able to increase the rent from \$550.00 to \$600.00, and for some months to \$620 and \$630, without following the statutory requirements for rental increases cited above. The evidence reveals that the Appellant did not follow these statutory requirements and the Commission finds that the Respondents cannot waive these statutory requirements.

Accordingly, the Commission agrees with the Director's findings and the Appellant is hereby required to return rent in the amount of \$1,260.00 to the Respondents. This sum shall be paid on or before February 28, 2006.

**IN THE MATTER** of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Diana de Jonge of Order No. LD05-337 of the Director of Residential Rental Property, dated December 9, 2005.

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# Order

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**WHEREAS** Diana de Jonge (the Appellant) appeals against Order No. LD05-337 of the Director of Residential Rental Property, dated December 9, 2005;

**AND WHEREAS** the Commission heard the appeal in Charlottetown on January 26, 2006;

**NOW THEREFORE**, for the reasons given in the annexed Reasons for Order;

## IT IS ORDERED THAT

1. The appeal is denied.
2. The Appellant shall return rent in the amount of \$1,260.00 to the Respondents. This payment shall be made on or before February 28, 2006.

**DATED** at Charlottetown, Prince Edward Island, this 9th day of February, 2006.

### BY THE COMMISSION:

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Weston Rose, Commissioner

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Kathy Kennedy, Commissioner

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Anne Petley, 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.*

IRAC144A(99/2)