



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR06001
Order LR06-04**

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Ryan Nelder and Anthony McDonald of Order No. LD05-309 of the Director of Residential Rental Property, dated December 21, 2005.

BEFORE THE COMMISSION

on Monday, the 13th day of March, 2006.

Weston Rose, Commissioner
Norman Gallant, Commissioner
Anne Petley, Commissioner

Order

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Ryan Nelder and Anthony McDonald of Order No. LD05-309 of the Director of Residential Rental Property, dated December 21, 2005.

Participants

1. **Appellants:** Ryan Nelder and Anthony McDonald
 2. **Respondent:** Jenny Nichol (not present)
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Reasons for Order

1. Introduction

Ryan Nelder and Anthony McDonald (the Appellants) appealed Order LD05-309 (Exhibit E-7) issued by the Office of the Director of Residential Rental Property (the Director) on December 21, 2005. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-9) on January 3, 2006.

The Director's Order and the present appeal concern a rental unit located at 73 Bonavista Drive in Cornwall (the unit).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, January 30, 2006.

2. Background

The Respondent moved into the unit on October 1, 2004 under a verbal month-to-month rental agreement with the Respondent. Rent in the amount of \$545.00 was payable on the first day of every month. A security deposit of \$250.00 was received from the Respondent when the parties entered into the agreement. The rent was increased to \$555.00 per month, effective February 1, 2005.

From the evidence before the Director it is not clear whether the Respondent moved out of the unit in June or July 2005. The unit was rented by new tenants who took possession of it on August 26, 2005.

On September 15, 2005, the Appellants filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) pursuant to section 8 of the **Rental of Residential Property Act** (the **Act**). The Appellants indicated on this Form 2 that the Respondent vacated the unit owing \$1,010.00 rent on July 1, 2005.

The Director held a hearing on November 18, 2005 pursuant to section 4(2)(d) of the **Act**. The Appellants attended the hearing but the Respondent did not attend. On December 21, 2005, the Director, in Order LD05-309, ordered that the Respondent pay rent to the Appellants in the amount of \$417.50. The Director also ordered that this payment be made in installments of \$100.00 payable on January 20, February 20, March 20 and April 20, 2006 with the remaining sum of \$17.50 payable on May 20, 2006.

3. Decision

The appeal is allowed for the reasons that follow.

Central to the present appeal is the issue of whether the Respondent owes one month's rent or two month's rent; that is to say, did she move out of the unit in June 2005 or July 2005? The written evidence on file at the time of the hearing before the Director is unclear on this issue, and the Director quite appropriately noted this lack of clarity.

However, at the hearing before the Commission, the Appellants offered testimony to help explain the lack of clarity on the issue of which month the Respondent moved out of the unit. The Appellants testified that on the day of the hearing before the Director, they had three separate hearings. They stated that they only received notice for two of these hearings. Mr. Nelder went home to retrieve documentation required for another hearing. Mr. McDonald, who had only very recently returned to Prince Edward Island, remained to represent the Appellants at the hearing of this matter before the Director. As a result, the Appellants submit that a miscommunication occurred. The absence of Mr. Nelder, who was more knowledgeable about this matter than Mr. McDonald, resulted in confusion at the hearing before the Director with respect to the specific month when the Respondent moved out of the unit.

The Commission finds the Appellant's testimony with respect to the confusion to be credible. The Respondent was not present at the hearing to test the Appellants' credibility or offer differing evidence on this issue. Further, the Respondent's October 4, 2005 letter agreed with the amount owed as stated by the Appellants in their September 15, 2005 Form 2. Accordingly, the Commission finds that the Respondent vacated the unit as of August 1, 2005, as noted in the August 11, 2005 Form 8 received on September 15, 2005.

The Respondent's rent cheque of \$555.00 for the month of June 2005 was returned NSF to the Appellants. The Commission finds that rent is also owed for the month of July, in the amount of a further \$555.00, for a subtotal of \$1,110.00. The damage deposit was \$250.00 and this sum was retained by the Appellants. The August 11, 2005 Form 8 notes that \$115.00 was to be retained for the cleaning of carpets and the removal of trash. That Form 8 also identifies accrued interest on the damage deposit of \$2.50. From the sum of the damage deposit plus accrued interest (\$252.50), the Commission subtracts \$115.00 properly withheld for the cost of garbage removal and carpet cleaning, leaving \$137.50 representing the balance of the damage deposit. The balance of said damage deposit shall then be subtracted from the outstanding rent of \$1,110.00 for the months of June and July 2005. Accordingly, the Commission finds that a total sum of \$972.50 is owed by the Respondent to the Appellants.

The Commission hereby orders that the Respondent pay the Appellants the sum of \$972.50 in 9 monthly payments of \$100.00 each commencing on January 20, 2006 and continuing on the 20th day of each month to September 20, 2006 inclusive, plus a tenth payment of \$72.50 payable on October 20, 2006.

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act*, by Ryan Nelder and Anthony McDonald of Order No. LD05-309 of the Director of Residential Rental Property, dated December 21, 2005.

Order

WHEREAS Ryan Nelder and Anthony McDonald (the Appellants) appeal against Order LD05-309 of the Director of Residential Rental Property, dated December 21, 2005;

AND WHEREAS the Commission heard the appeal in Charlottetown on January 30, 2006;

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

IT IS ORDERED THAT

1. The appeal is allowed.
2. The Respondent Jenny Nichol pay the Appellants the sum of \$972.50 in 9 monthly payments of \$100.00 each commencing on January 20, 2006 and continuing on the 20th day of each month to September 20, 2006 inclusive, plus a tenth payment of \$72.50 payable on October 20, 2006.

DATED at Charlottetown, Prince Edward Island, this 13th day of March, 2006.

BY THE COMMISSION:

Weston Rose, Commissioner

Norman Gallant, Commissioner

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.

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