



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR06007 and  
LR06008  
Order LR06-08**

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, by Nancy Gill (LR06007) and Heather MacDonald (LR06008) against Order LD06-162 of the Director of Residential Rental Property, dated June 9, 2006.

**BEFORE THE COMMISSION**

on Thursday, the 27th day of July, 2006.

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

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# Order

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, by Nancy Gill (LR06007) and Heather MacDonald (LR06008) against Order LD06-162 of the Director of Residential Rental Property, dated June 9, 2006.

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# Appearances & Witnesses

1. **For the Lessor:**

**Nancy Gill**

2. **For the Lessee:**

**Heather MacDonald**

**Witness:**

**Blair Fitzpatrick**

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, by Nancy Gill (LR06007) and Heather MacDonald (LR06008) against Order LD06-162 of the Director of Residential Rental Property, dated June 9, 2006.

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# Reasons for Order

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## 1. Introduction

Nancy Gill (the Lessor) has appealed Order LD06-162 (Exhibit E-7) issued by the Office of the Director of Residential Rental Property (the Director) on June 9, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Lessor's Notice of Appeal (Exhibit E-8) on June 15, 2006.

Heather MacDonald (the Lessee) has appealed Order LD06-162 (Exhibit E-7) issued by the Office of the Director of Residential Rental Property (the Director) on June 9, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Lessee's Notice of Appeal (Exhibit E-9) on June 15, 2006.

The Director's Order and the present appeals concern the matter of an apartment located at 20 Gerald Street, Apt. 2, in Charlottetown (the apartment).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Monday, July 10, 2006.

## 2. Background

The Lessee had moved into the apartment over ten years ago under an oral month to month rental agreement. The rent was \$500.00 payable on the first day of each month.

In August 2004 the Lessee stopped paying rent. Kevin Hyde, the Lessor's agent, personally served the Lessee with a Notice of Termination by Lessor of Rental Agreement (Form 4) on March 11, 2005.

In Order LD06-162, the Director found that the Lessee owed the Lessor rent in the amount of \$3,650.00 to be paid on or before June 30, 2006. The Lessor had claimed \$4,650.00 in unpaid rent. However, the Director reduced the Lessor's claim by \$1000.00 as the evidence before the Director was not sufficient to support the claim for unpaid rent for the months of April and May 2005.

At the hearing before the Commission, the Lessee acknowledges that she owes rent. She states that she could not afford to pay \$3,650.00. She also acknowledges that she owes rent for the month of April 2005. Her witness supported this information by testifying that the Lessee moved out of the apartment on the last day of April 2005. The Lessee requests more time to pay the rent owed.

The Lessor maintains that the Lessee resided in the apartment for the months of April and May 2005. The Lessor requests that the amount owed be calculated in the amount of \$4,650.00.

### **3. Decision**

The Commission allows the Lessor's appeal in part, and orders that the Lessee pay the Lessor the sum of \$4,150.00 for unpaid rent up to, and including, April 2005.

The Lessee's appeal is denied.

The Commission notes that the Lessee does not dispute that rent is owed. The Lessee seeks extra time to pay the amount owed.

The evidence before the Director solidly supported the findings contained in Order LD06-162. However, the Commission, hearing these appeals *de novo*, is entitled to consider new evidence.

The Lessee and her witness confirmed that she occupied the apartment for the month of April 2005. The Commission finds this evidence to be credible. Accordingly, the Lessor's appeal is allowed in part as this new evidence increases the total rent owed from \$3,650.00 to \$4,150.00, reflecting the addition of one month's rent.

The Commission does not, however, agree with the submissions provided by the Lessor that the Lessee owes the Lessor rent for the month of May 2005. While the Lessor's records list the Lessee as a tenant for May 2005, this alone does not establish that the Lessee occupied the apartment for the month of May 2005.

With respect to the Lessee's request for additional time to pay the rent owed, the Commission notes that it is already over a year since the Lessee left the apartment. Since there is no evidence that the Lessee has been making payments to the Lessor to reduce the sum owing, the Commission finds that the total rent owing of \$4,150.00 shall be paid on or before August 11, 2006 unless the Lessor and Lessee mutually agree to a payment schedule. Accordingly, the Lessee's appeal is denied.

**IN THE MATTER** of two appeals, under Section 25 of the Rental of Residential Property Act, by Nancy Gill (LR06007) and Heather MacDonald (LR06008) against Order LD06-162 of the Director of Residential Rental Property, dated June 9, 2006.

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# Order

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**WHEREAS** Nancy Gill (the Lessor) and Heather MacDonald (the Lessee) appeal against Order LD06-162 of the Director of Residential Rental Property, dated June 9, 2006;

**AND WHEREAS** the Commission heard the appeal in Charlottetown on July 10, 2006;

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

## IT IS ORDERED THAT

1. The Lessor's appeal is allowed in part, and the Lessee's appeal is denied.
2. The total rent owing is \$4,150.00.
3. The total rent owing shall be paid on or before August 11, 2006 unless the Lessor and Lessee mutually agree to a payment schedule.

**DATED** at Charlottetown, Prince Edward Island, this 27th day of July, 2006.

**BY THE COMMISSION:**

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Weston Rose, Commissioner

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Norman Gallant, Commissioner

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Anne Petley, Commissioner

## NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the *Act* provide as follows:

*13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.*

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