



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

**Docket LR06014  
Order LR06-13**

**IN THE MATTER** of an appeal, under  
Section 25 of the *Rental of Residential  
Property Act*, by David Smith against Order  
No. LD06-228 of the Director of Residential  
Rental Property, dated August 25, 2006.

**BEFORE THE COMMISSION**  
on Thursday, the 5th day of October, 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 David Smith against Order No. LD06-228 of the Director of Residential Rental Property, dated August 25, 2006.

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## Participants

1. **Appellant:** David Smith
  2. **Respondent:** Nancy Bulmer and Robyn Storer
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# Reasons for Order

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## 1. Introduction

David Smith (the Appellant) has appealed Order LD06-228 (Exhibit E-11) issued by the Office of the Director of Residential Rental Property (the Director) on August 25, 2006. The Island Regulatory and Appeals Commission (the Commission) received the Appellant's Notice of Appeal (Exhibit E-12) on August 30, 2006.

The Director's Order and the present appeal concern the matter of the return of rent for the residential premises located at 23 Orchard Drive in Stratford (the residence).

The appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Tuesday, September 19, 2006.

## 2. Background

In a previous Order of the Director issued on March 2, 2006, Order LD06-053, the Director ordered that the Appellant receive \$27.84 of the security deposit and Nancy Bulmer and Robyn Storer (the Respondents) receive \$190.16 of said security deposit. In making this determination, the Director found that the rental agreement between the parties was in effect terminated on June 9, 2006.

On April 10, 2006 the Respondents filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) seeking a return of rent for the period June 9 to July 15, 2005 in the total amount of \$704.84.

The Director held a hearing on June 22, 2006 pursuant to section 4(2)(d) of the **Rental of Residential Property Act** (the **Act**). In Order LD06-238, the Director determined that the Appellant owed the Respondents rent in the amount of \$704.84 and ordered the Appellant to pay said sum to the Respondents on or before September 18, 2006.

### 3. Decision

The Commission allows the appeal in part and orders that the Order LD06-228 be varied by reducing the return of rent payable by the Appellant to the Respondents from \$704.84 to \$654.84 for the reasons that follow.

The Respondents moved into the residence on May 15, 2005 under a written rental agreement for a fixed term commencing May 15, 2005 and ending August 31, 2005. The rent was stated as \$575.00 per month, payable on the 15<sup>th</sup> day of each month.

In Order LD06-053 the Director found that the rental agreement was terminated on June 9, 2005 for the following reasons:

*The lessor [Appellant] changed the locks to the door and gave a key to Kendra Saunders and Bobie Folly on June 9, 2005. Whatever the lessor's intention was in providing a key to the new tenants on June 9, 2005, the implication is that they had possession of the premises which is confirmed by one of them moving their personal property into the premises. As a result, the lessees [Respondents] were no longer entitled to occupy the premises and their rental agreement with the lessor was terminated as of that date. The only way such an arrangement could have been possible is for the lessees to have agreed to allow another tenant to occupy the premises for which they were paying rent and did not have access. The Director is satisfied that this was not the case.*

The Director also found that the monthly rent of \$575.00 reflected an unlawful rent increase in the amount of \$25.00.

No appeal of Order LD06-053 was filed with the Commission.

At the hearing before the Commission, the Appellant stated that he should not have to return any rent as he did not receive rent from the new tenants for the residence until August 1, 2005. He also stated that the \$25.00 increase in the rent paid by the Respondents was due to the fact that the rental agreement was a short term lease.

The Respondents told the Commission that as the rental agreement was previously found to have been terminated as of June 9, 2005, the rent payments made by them for the period of time beyond that date should be returned to them.

The Respondents acknowledged at the hearing that they had not topped up the oil tank and that they agreed that \$50.00 would be a reasonable adjustment in lieu of an oil tank top up.

The Commission confirms the Director's finding that the rental agreement was terminated on June 9, 2005. The Commission also confirms the Director's finding that there was an unlawful increase in the amount of rent in the amount of \$25.00 per month.

However, the Commission, hearing this matter *de novo*, is entitled to consider the evidence presented at the hearing that the Respondents did not top up the oil tank, yet fully intended to compensate the Appellant for this in the amount of \$50.00.

Accordingly, the Commission hereby orders that the Appellant pay the sum of \$654.84 to the Respondents, representing the sum of \$704.84 as ordered by the Director, minus a \$50.00 oil adjustment in lieu of a top up of the oil tank.

**IN THE MATTER** of an appeal, under Section 25 of the *Rental of Residential Property Act*, by David Smith against Order No. LD06-228 of the Director of Residential Rental Property, dated August 25, 2006.

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# Order

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**WHEREAS** David Smith against Order No. LD06-228 of the Director of Residential Rental Property, dated August 25, 2006, dated August 25, 2006;

**AND WHEREAS** the Commission heard the appeal in Charlottetown on September 19, 2006;

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

## IT IS ORDERED THAT

1. The appeal is allowed in part.
2. Order LD06-228 is hereby varied by reducing the return of rent payable by the Appellant to Nancy Bulmer and Robyn Storer (the Respondents) from \$704.84 to \$654.84 to reflect a \$50.00 oil adjustment in lieu of a top up of the oil tank.

**DATED** at Charlottetown, Prince Edward Island, this 5th day of October, 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.*

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