



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

**Docket LR08-005  
Order LR08-05**

**IN THE MATTER** of an appeal, under  
Section 25 of the *Rental of Residential  
Property Act*, by Randy Pitre and Wayne  
Richards against Order No. LD08-141 of the  
Director of Residential Rental Property,  
dated February 15, 2008.

**BEFORE THE COMMISSION**  
on Friday, the 18th day of April, 2008.

Brian J. McKenna, Vice Chair  
Chester MacNeill, 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 Randy Pitre and Wayne Richards against Order No. LD08-141 of the Director of Residential Rental Property, dated February 15, 2008.

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## Participants

1. Appellants: Randy Pitre  
Wayne Richards
2. Respondent: Director of Residential Rental Property (not present at the hearing)

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## Reasons for Order

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### 1. Introduction

Randy Pitre and Wayne Richards (the Appellants) have appealed Order LD08-141 issued by the Office of the Director of Residential Rental Property (the Director) on February 15, 2008. The Island Regulatory and Appeals Commission (the Commission) received the Appellants' Notice of Appeal (Exhibit E-13) on February 28, 2008.

By way of background, an earlier order was issued by the Director on July 31, 2007. This earlier Order (Order LD07-181) concerns the Appellants' July 16, 2007 Application by Lessor for Earlier Termination (Form 5), pursuant to subsection 14(3) of the *Rental of Residential Property Act*, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**). This application sought an order that the rental agreement between the Appellants and Rachael McPhee, Lessee, (the former tenant) be terminated on July 23, 2007 rather than on August 12, 2007, said later date being the ordinary termination date based on the minimum notice period under paragraph 14(2)(a) of the **Act**.

The Order that is the subject of the present appeal, Director's Order LD08-141, concerns an application by the former tenant on August 21, 2007, pursuant to section 8(d.1) of the **Act**, believing that the condition of the rental agreement relevant to the return of the security deposit had not been complied with. On September 10, 2007, the Appellants filed a Notice of Intention to Retain

Security Deposit (Form 8), with an attached letter, both the Form and the attachment dated September 4, 2007.

This appeal concerns residential premises located at 12 Young Street in Charlottetown.

This appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Thursday, March 20, 2008.

## 2. Appellants' Submission

The Appellants told the Commission that the July 24, 2007 hearing before the Director was a long hearing. At the end of the hearing, the Director asked the Appellants and the former tenant if there was anything further. Both of these parties said "no". Order LD07-181 touched on the fact that a \$140.00 security deposit had been paid. Neither the Appellants nor the former tenant appealed this Order within the 20 day appeal period. The former tenant was allowed to stay in the residential premises for an extra 12 days in August 2007 yet did not pay rent for this extra time.

The Appellants view the former tenant's August 21, 2007 application to be a "retrying" or "rehashing" of the issues. The Appellants submit that the appropriate time for the security deposit to have been dealt with was at the first hearing.

The Appellants request that the Commission "strike down" the second Order (LD08-141). The Appellants submit that Order LD08-141 is illegal because there cannot be two orders addressing the issues between the parties – the sole opportunity at law for the former tenant to recover her security deposit was to have filed an appeal of the original order.

## 3. Decision

The Commission denies this appeal for the reasons that follow.

Order LD07-181 was issued on July 31, 2007. At that time, the former tenant was still in possession of the residential premises. Order LD07-181 refers to an earlier order concerning the parties and notes the following:

*The Director in Order LD07-180 dated July 30, 2007 determined that the notice of termination served on July 12, 2007 would terminate the rental agreement on August 12, 2007. Based on that decision, the lessee must therefore vacate the premises on or before on [sic] August 12, 2007.*

*In order to terminate the lessee's rental agreement on an earlier date than August 12, 2007, the lessor's representative had to bring forward evidence to prove on a balance of probabilities that the violations of the rental agreement are ongoing and of such a degree that an earlier termination of the rental agreement is warranted. The Director determines that the evidence presented by the lessor's representative failed to establish that an earlier termination of the rental agreement is justified.*

Section 10 of the **Act** reads as follows:

**10.** (1) *The lessor may, upon entering into a rental agreement, request from a lessee a security deposit not exceeding*

*(a) in the case of a rental agreement where the rent is paid weekly, the equivalent of the rent per week;*

*(b) in any other case, the equivalent of the rent per month*

*that is or would be required to be paid for the residential premises.*

*(2) Subject to subsection (5), a security deposit or the proceeds thereof shall be held in trust by the lessor and, if in money, shall be deposited in a trust account at a chartered bank, trust company or credit union within the province.*

*(3) The lessor shall credit interest to the lessee on the full amount or value of the security deposit*

*(a) at the rate of six per cent per annum before April 20, 1981;*

*(b) from April 20, 1981 until the effective date, at the rate of ten per cent per annum;*

*(c) from the effective date until the end of the calendar year 1988, at the rate of interest payable on provincial deposit receipts on the effective date, less two per cent;*

*(d) for each year thereafter, at the rate of interest payable on provincial deposit receipts on the first business day of each year, less two per cent,*

*during the time the security deposit is held by the lessor.*

*(4) Subject to subsection (5), the security deposit, together with the interest set out in subsection (3) shall be returned to the lessee within ten days of the date on which the lessee delivers up possession of the residential premises.*

*(5) The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation. 1998,c.100,s.2.*

(6) *Where the lessor retains part of a security deposit under subsection (5), he shall return the remainder of the security deposit with interest to the lessee with the notice referred to in that subsection.*

(7) A lessee served with a notice under subsection (5) may, within fifteen days of the date of service or such longer period as the Director may permit, apply to the Director in the form prescribed by regulation for a determination on the disposition of the security deposit, in which case he shall serve a copy of the application on the lessor. 1998,c.100,s.2.

(8) Where no application is made by the lessee pursuant to subsection (7), the lessor may retain the security deposit or such portion thereof as claimed in his notice.

(9) Where the lessee makes an application pursuant to subsection (7), the lessor shall, not later than five days after service on him of the application, deliver to the Director the amount of the security deposit and accumulated interest which he has retained and, if he fails to do so, the Director may issue an order directing him to do so within such time as may be specified in the order.

(10) The Director shall investigate all applications made pursuant to subsection (7) and make such determination with respect to them in such manner as he deems appropriate and just.

(11) *The lessor shall file with the Director such reports as may be required by regulations with respect to security deposits held in trust.*

(12) *A person who acquires the interest of a lessor in residential premises, whether by purchase, mortgage sale or otherwise, has the rights and is subject to the obligations of the previous lessor with respect to a security deposit paid to the previous lessor.* 1988,c.58,s.10; 1990,c.53,s.3; 1998,c.100,s.2.

Emphasis added by the Commission.

A careful reading of section 10 makes it clear that there is a specific process to be followed in order for a lessor to retain a security deposit. This process may be summarized as follows:

- The process starts with the date the lessee delivers up possession.
- If the lessor takes no action, the security deposit plus interest is to be returned to the lessee within ten days of the date the lessee delivers up possession.
- If, however, the lessor wishes to retain all or part of the security deposit, he is required to, within ten days of the date the lessee delivers up possession, serve the lessee with a notice of intention to retain the security deposit in the form prescribed by regulation. The Director may permit a longer period of time.

- Once the lessor has served the lessee with a notice of intention to retain the security deposit in the form prescribed by regulation, the lessee may, with fifteen days of the date of service of the notice of intention to retain the security deposit, apply to the Director for a determination on the disposition of the security deposit. The Director may permit a longer period of time. A copy of the application shall be served on the lessor.
- If the lessee has not made an application for a determination on the disposition of the security deposit, the lessor may then retain the security deposit, or the portion he has claimed.
- If the lessee has applied to the Director for a determination on the disposition of the security deposit, the lessor shall, within five days after service of the application on the disposition of the security deposit, deliver the amount of the security deposit plus interest to the Director.
- The Director then investigates the applications concerning the security deposit and makes a determination. It is at this stage that a hearing on the issue of the determination of the security deposit could occur.

The Commission finds that the Director could not have lawfully dealt with the security deposit issue at the time Order LD07-181 was issued because the lessee had not yet delivered up possession of the residential premises and no notice of intention to retain security deposit had been served upon the lessee at that time. The **Act** sets out a process and this process must be followed before the determination of a security deposit can be decided.

The Commission finds that Order LD08-141 would have been inappropriate only if it dealt with the same issue as Order LD07-181. It did not. Order LD07-181 dealt with the issue of early termination. Order LD08-141 dealt with a separate issue, the issue of the security deposit, which could not be determined until after the lessee had delivered up possession of the residential premises and until after the lessor had served a notice of intention to retain security deposit on the lessee.

For the foregoing reasons, the appeal is hereby denied.

**IN THE MATTER** of an appeal, under  
Section 25 of the *Rental of Residential  
Property Act*, by Randy Pitre and Wayne  
Richards against Order No. LD08-141 of the  
Director of Residential Rental Property,  
dated February 15, 2008.

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# Order

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**WHEREAS** Randy Pitre and Wayne Richards (the  
Appellants) appeal against Order No. LD08-141 of the Director of  
Residential Rental Property, dated February 15, 2008;

**AND WHEREAS** the Commission heard the appeal in  
Charlottetown on March 20, 2008;

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

## IT IS ORDERED THAT

1. The appeal is hereby denied.

**DATED** at Charlottetown, Prince Edward Island, this 18th day  
of April, 2008.

**BY THE COMMISSION:**

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Brian J. McKenna, Vice Chair

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Chester MacNeill, 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)