



**Docket LR08016  
Order LR08-15**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Sandra MacGarvie against  
Order No. LD08-382, of the Director of  
Residential Rental Property, dated October  
10, 2008.

**BEFORE THE COMMISSION**  
on Monday, the 10th day of November, 2008.

John Broderick, Commissioner  
Gordon McCarville, Commissioner  
Anne Petley, Commissioner

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# Order

Compared and Certified a True Copy

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(Sgd.) Susan Jefferson  
Commission Administrator

**IN THE MATTER** of an appeal, under Section 25 of the Rental of Residential Property Act, by Sandra MacGarvie against Order No. LD08-382, of the Director of Residential Rental Property, dated October 10, 2008.

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# Order

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## Participants

All participants were heard before the Commission via telephone conference call.

1. For the Appellant:  
Sandra MacGarvie
  2. For the Respondents:  
Paul MacGregor
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## Introduction

The Appellant Sandra MacGarvie (Ms. MacGarvie) has appealed Order No. LD08-382 issued by the Office of the Director of Residential Rental Property (the Director) on October 10, 2008. The Island Regulatory and Appeals Commission (the Commission) received Ms. MacGarvie's Notice of Appeal (Exhibit E-5) on October 16, 2008.

On September 24, 2008, the Respondent Paul MacGregor (Mr. MacGregor) filed a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) with Access PEI Summerside. The Director received the Form 2 on September 26, 2008. The Form 2 alleges that Ms. MacGarvie "refuses to pay rent" and seeks as a remedy an order surrendering possession of the residential premises to Mr. MacGregor, and directing the Sheriff to put Mr. MacGregor in possession. Included with the Form 2 was a Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4), dated September 3, 2008, to be effective September 23, 2008, addressed to Ms. MacGarvie and signed by Mr. MacGregor.

On October 1, 2008, the Director sent a Notice of Hearing to the parties, advising that a hearing would be held at 1:00 p.m. on October 9, 2008 at Access PEI Summerside. Ms. MacGarvie did not appear, and the Director issued Order LD08-382 thereby surrendering possession of the residential premises to Mr. MacGregor and Michele MacGregor (Ms. MacGregor), and

directing the Sheriff to put Mr. MacGregor and Ms. MacGregor in possession of the residential premises at 12:00 p.m. October 14, 2008.

The present appeal was heard in the Commission's main hearing room in Charlottetown, Prince Edward Island on Friday, October 31, 2008.

## Evidence

The evidence of Ms. MacGarvie may be briefly summarized as follows. Mr. MacGregor did not provide agreed cable TV access, interfered with her privacy and restricted access to the receipt of her mail. Ms. MacGarvie also stated that Mr. MacGregor refused to accept rent money following service of the Form 4 Notice of Termination.

The evidence of Mr. MacGregor may be briefly summarized as follows. Ms. MacGarvie did not pay the September rent. Rent for the month of October is also outstanding. Mr. MacGregor never refused to accept rent.

Both parties stated that, by another Order of the Director, the rent had been increased to \$530.00 per month, effective September 1, 2008.

## Decision

The Commission takes official notice that Monday, September 1, 2008 was a statutory holiday. The Form 4 Notice of Termination was dated September 3, 2008. The Commission accepts the evidence of Ms. MacGarvie that she attempted to pay the rent after being served with the Form 4 and that Mr. MacGregor refused to accept the rent. The Commission notes that there is no evidence that Ms. MacGarvie was habitually late in paying rent. The Commission is also concerned that the mail delivery system used at the residential premises may have interfered with Ms. MacGarvie receiving her mail, including the Notice of Hearing for the October 9, 2008 hearing before the Director, thus depriving her of the right to be notified of that hearing.

With respect to the provision of cable TV services, as there is no written rental agreement between the parties documenting the inclusion of this service, the issue of the provision of cable TV service represents a matter of private contract between the parties and thus is beyond the jurisdiction of the Commission.

Subsection 13(2) of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1(the **Act**) reads as follows:

*13(2) A lessee may, within ten days of being served with a notice of termination under subsection (1) deliver to the lessor all the rent due as of that date, whereupon the notice shall be void.*

Subsection 33(3) of the **Act** reads as follows:

*33(3) Where a document is delivered by ordinary mail, it is deemed to have been delivered on the third day after the date of mailing. 1988,c.58,s.33; 1991,c.18,s.22 {eff.} Nov. 4/91.*

Section 9 of the **Interpretation Act**, R.S.P.E.I. 1988, Cap. I-8 reads as follows:

*9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.*

The appeal is allowed. The Commission finds that Ms. MacGarvie was deprived of her statutory right to pay all the rent due within ten days of being served with a notice of termination. In order to provide an appropriate remedy, and mindful of the date of deemed delivery of documents delivered by ordinary mail, the Commission hereby orders the suspension of Director's Order LD08-382 for a period of thirteen days up to and including November 23, 2008.

Prior to November 24, 2008 Ms. MacGarvie shall be granted her statutory right to deliver the total rent due and Mr. MacGregor and Ms. MacGregor shall be obligated by order of this Commission to accept these funds and provide a written receipt to Ms. MacGarvie.

Payment of the total rent due shall be in the form of one or more of the following specified guaranteed funds: (i) cash, (ii) money order, (iii) certified cheque, (iv) government cheque payable to Mr. MacGregor, Ms. MacGregor and Ms. MacGarvie jointly and endorsed by Ms. MacGarvie, or (v) government cheque payable to Ms. MacGarvie endorsed by herself. More than one form or source of guaranteed funds may be used, if necessary, so long as the combined guaranteed funds equal the total rent due.

For greater certainty, the total rent due represents rent for the months of September, October and November 2008, at \$530.00 per month, for a total of \$1590.00.

Providing that the total rent due is paid in full according to the requirements set out in the previous paragraph and prior to November 24, 2008, Director's Order LD08-382 shall be reversed.

If, however, the rent due is not paid within the requirements set out in the previous paragraphs, the Sheriff is directed to put Mr. MacGregor and Ms. MacGregor in possession of the residential premises located at 561 Notre Dame Street, Apt. 1, Summerside, Prince Edward Island at 12:00 p.m. (noon) on November 24, 2008.

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**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*.

**IT IS ORDERED THAT**

1. **The appeal is allowed.**
2. **The Commission orders the suspension of Director's Order LD08-382 for a period of thirteen days up to and including November 23, 2008.**
3. **The Appellant Ms. MacGarvie shall be granted the opportunity, prior to November 24, 2008, to deliver the total rent due for the months of September, October and November 2008, representing the sum of**

**\$1590.00 and the Respondents Mr. MacGregor and Ms. MacGregor are hereby ordered to accept the rent due and provide Ms. MacGarvie with a written receipt. Payment shall be in the form of guaranteed funds as detailed in the body of the present Order.**

**Providing that the total rent due is paid in full according to the requirements set out in the present Order and paid prior to November 24, 2008, Director's Order LD08-382 shall be reversed.**

- 4. If the total rent due is not paid prior to November 24, 2008 pursuant to the requirements set out in the body of the present Order, the Sheriff is hereby directed to put Mr. MacGregor and Ms. MacGregor in possession of the residential premises located at 561 Notre Dame Street, Apt. 1, Summerside, Prince Edward Island at 12:00 p.m. (noon) on November 24, 2008.**

**DATED** at Charlottetown, Prince Edward Island, this 10th day of November, 2008.

**BY THE COMMISSION:**

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Gordon McCarville

Gordon McCarville, Commissioner

(Sgd.) Anne Petley

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.*

IRAC141y-SFN(2008/10)