



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR08-020  
Order LR09-03**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Leah Perry against Order  
No. LD08-442, of the Director of Residential  
Rental Property, dated November 28, 2008.

**BEFORE THE COMMISSION**  
on Friday, the 6th day of March, 2009.

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

---

# Order

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Leah Perry against Order  
No. LD08-442, of the Director of Residential  
Rental Property, dated November 28, 2008.

---

# Order

---

## Introduction

On December 23, 2008, the Commission received a Notice of Appeal filed by the Appellant Leah Perry (Mrs. Perry). Mrs. Perry appealed Order No. LD08-442 issued by the Office of the Director of Residential Rental Property (the Director) on November 28, 2008.

In Order LD08-442, the Director ordered that the Respondent Norray Properties (Norray) conduct repairs and corrections involving a musty smell and damp walls in the basement, repair flooring in the kitchen, clean mold growth on the bathroom floor, and add screens to the front and back windows.

This appeal proceeded to a hearing before the Commission on January 19, 2009. Mrs. Perry represented herself at the hearing. Joe Gillis (Mr. Gillis) represented Norray.

## Evidence

Mrs. Perry testified that she appealed Order LD08-442 because it did not address the following issues with the residential premises:

- Interior was last painted in 2000 by Mrs. Perry and her husband at their own expense.
- Problems accessing the inside of the windows for cleaning.
- Replacement of carpet – Mrs. Perry and her husband had replaced the carpeting on two occasions at their own expense.
- Replacement of fridge and stove – when Mrs. Perry and her husband moved in approximately 22 years ago, they provided the fridge and stove. These units remain to this day and are now in poor condition.
- The residential premises are expensive to heat – approximately \$300.00 per month.
- Mrs. Perry and her husband were never provided with a key for the front door lock. They were told to use the back door.

Mrs. Perry told the Commission that Norray is willing to replace the flooring in the kitchen as ordered by the Director. However, Norray insists that the washer and dryer be removed from the kitchen and returned to the basement. Mrs. Perry explained that she and her husband had hired a plumber several years ago to move the washer and dryer to the kitchen as health problems prevented them from safely carrying laundry up and down the basement steps.

Mr. Gillis testified that Norray manages the building containing the residential premises. He noted that the rent was determined on the basis that no appliances would be included. He noted that other units in the same building were renovated over the years but rent at a higher rent. He notes that the basement was never designed or intended as a living space. He noted that years ago there was an indication that the Perrys were using the basement to supplement the living quarters. He noted that the interior paint in the unit is in good condition. He noted that the carpeting installed in 2000 appears in good condition.

Mr. Gillis noted that Norray replaced the screens and had the unit inspected by the Department of Health for mold as required by Order LD08-442. He noted that the washer and dryer should be returned to the basement as the owner of the property had never given permission for these appliances to be installed in the kitchen. He noted that holes were cut in the kitchen floor and exposed pipes were installed for those appliances and that the extra plumbing should be removed and the holes repaired before new flooring is installed.

## Decision

The Commission allows the appeal for the reasons that follow.

Section 6, condition 1 of the **Rental of Residential Property Act** reads as follows:

*6. Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:*

*1. Condition of Premises*

*The lessor shall keep the premises in a good state of repair and fit for habitation during the tenancy and shall comply with any enactment respecting standards of health, safety or housing notwithstanding any state of non-repair that may have existed at the time the agreement was entered into.*

The Commission notes that Mrs. Perry and her husband (the Perrys) have lived in the residential premises for the last 22 years. During that time, the majority of the interior maintenance has either been performed by the Perrys themselves, or by professionals hired by them.

The Commission is concerned as well about the significant discrepancy with respect to improvements and rental rates of the other units in the building, given that the commencement of a new tenancy is not a triggering factor for

rent increases. The Commission reminds Norray that rent increases are only lawful in accordance with the process set out in Part IV of the **Rental of Residential Property Act**.

The Commission notes that there was no evidence of a written rental agreement between the parties. Given that the oral rental agreement was entered into some 22 years ago, it is difficult to objectively determine whether or not an adjustment was made to the original advertised rent given that the Perrys provided their own fridge and stove. The Commission has the oral evidence of Mrs. Perry to the effect that the rent was not reduced. Mr. Gillis states that he was informed that the rent was reduced. The Commission gives greater weight to the evidence of Mrs. Perry on this issue than the hearsay evidence offered by Mr. Gillis.

Now that the residential premises are professionally managed by Norray, the Commission expects that Norray will provide the Perrys with a formal outline of what tenants may, and may not, do with respect to modifications to the residential premises in order to avoid any future misunderstandings. In this regard, the Commission notes that Norray has the obligation to maintain the residential premises and the Perrys have the responsibility to bring such matters to Norray's attention. If the matter cannot be resolved, the appropriate recourse is to seek the assistance of the Director.

The Commission hereby allows the appeal and orders that Order LD08-442 stand with the following additions:

- Norray shall investigate the matter of the locks to ensure that the Perrys have keys for both the front and back doors.
- As Norray, or the previous property manger, upon first learning of the Perrys installing the washer and dryer in the kitchen, did not take action to require the Perrys to return the washer and dryer to the basement, the Commission finds that Norray acquiesced to the kitchen location for the washer and dryer. The Commission accepts the testimony of Mrs. Perry that it would be unsafe for the Perrys to carry laundry up and down the basement steps. Accordingly, the Commission finds that the washer and dryer shall remain in the kitchen. Norray is hereby required to repair the kitchen floor, but only to the extent reasonable given the fact that the washer and dryer will remain in the kitchen.
- Norray shall paint the interior of the residential premises.
- Norray shall replace the fridge and stove with good working appliances. The Commission reminds the Perrys that these appliances will be the property of Norray and will remain in the residential premises in the event that the Perrys were to move out of said premises.

With respect to Mrs. Perry's concerns about the cost of heating the residential premises, the Commission takes official notice of the fact that 27 degrees Celsius is well above the Canadian standard for room temperature and therefore a reduction of the thermostat setting to 20 or 21 degrees Celsius may dramatically reduce the Perrys' heating bills.

The Commission wishes to point out to the Perrys that Norray is entitled to apply to the Director for an increase in rent pursuant to section 23 of the **Rental of Residential Property Act**, which reads as follows:

**23.** (1) *Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.*

(2) *The Director shall invite written representations from lessors and lessees to assist in establishing the annual prescribed percentage rent increase.*

(3) *Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee.*

(4) *Where the lessor seeks a rent increase equal to or less than the percentage amount permitted by subsection (1), the lessee may apply to the Director, not later than ten days after being served with the notice of rent increase, to have the Director review the rent increase being sought.*

(5) *An application pursuant to subsection (3) or (4) shall be made on the form prescribed by regulation and a copy of the application shall be served on the other party.*

(6) *Upon receipt of an application pursuant to subsection (3) or (4), the Director shall within ten days give written notice to the lessor and lessee of the date, time, and place which he has fixed for a hearing of the application.*

(7) *The lessor and lessee shall supply any information requested by the Director for the purpose of assessing the application, and all information provided to the Director shall be available to both parties, who shall preserve confidentiality with respect to it.*

(8) *At the hearing both parties are entitled to appear and be heard and the Director shall consider the following factors:*

(a) *whether the increase in rent is necessary in order to prevent the lessor sustaining a financial loss in the operation of the building in which the premises are situate;*

(b) *increased operating costs or capital expenditures as advised by the lessor;*

(c) *the expectation of the lessor to have a reasonable return on his capital investment;*

(d) *such other matters as may be prescribed by the regulations.*

(9) *After hearing and considering the application the Director may*

(a) *approve the rent increase;*

(b) *approve a rent increase of such lower amount as he may specify, and shall give written notice of his decision, and the reasons therefor, to all parties within thirty days of the date of the hearing.*

(10) *Where an application has been made pursuant to subsection (3) or (4), the lessor shall not charge or collect a rent increase pending the outcome of that application. 1988,c.58,s.23; 1991,c.18,s.22 {eff.} Nov. 4/91.*

**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. **Order LD08-442 stands with the following additions:**
  - Norray shall ensure that the Perrys have keys for both the front and back doors.
  - Norray shall permit the washer and dryer to remain in the kitchen. Norray is required to repair the kitchen floor, but only to the extent reasonable given the fact that the washer and dryer will remain in the kitchen.
  - Norray shall paint the interior of the residential premises.
  - Norray shall replace the fridge and stove with good working appliances.

**DATED** at Charlottetown, Prince Edward Island, this **6th** day of **March**, **2009**.

**BY THE COMMISSION:**

\_\_\_\_\_  
John Broderick, Commissioner

\_\_\_\_\_  
Gordon McCarville, 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.*

IRAC141y-SFN(2008/10)