



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09006  
Order LR09-08**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Ritchie Doucette against  
Order No. LD09-067, of the Director of  
Residential Rental Property, dated February  
26, 2009.

**BEFORE THE COMMISSION**  
on Monday, the 1st day of June, 2009.

John Broderick, Commissioner  
Ernest Arsenault, Commissioner  
Anne Petley, Commissioner

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# Order

Compared and Certified a True Copy

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(Sgd.) Susan Jefferson  
Commission Administrator

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## Introduction

On March 20, 2009, the Commission received a Notice of Appeal filed by the Appellant Ritchie Doucette (Mr. Doucette). Mr. Doucette appealed Order No. LD09-067 issued by the Office of the Director of Residential Rental Property (the Director) on February 26, 2009.

In Order No. LD09-067, the Director ordered that Mr. Doucette pay the Respondent Leslie Kelly (Mr. Kelly) the sum of \$1,338.33. The Director found that Mr. Kelly established a *prima facie* case that Mr. Doucette owed 2.5 months rent at \$700.00 per month = \$1,750.00 less the security deposit and accrued interest of \$411.67 for a balance owing of \$1,338.33.

This appeal proceeded to a hearing before the Commission on April 17, 2009.

## Evidence

Mr. Doucette testified that he moved into the apartment on November 1, 2006. He paid a security deposit of \$400.00. The rent was \$350.00 every two weeks. He asked for receipts as he paid in cash. However, he did not always get a receipt and the receipts were sometimes provided a couple days after payment was made. On one occasion he paid \$290.00 and then provided the remaining \$60.00 the next week. He never received written notice from Mr. Kelly that he was behind in paying the rent.

Sandra Hillier has been a friend and co-worker of Mr. Doucette for the past eight years. For the past two years, she has also served as his advocate. She noted that Mr. Doucette is well organized, responsible, quite independent and has a good memory. She testified that Mr. Doucette was upset in September 2008. He had advised her that his landlord told him that he was behind in his rent. Ms. Hillier asked Mr. Kelly about the receipts. She was told that receipts were not given each time a payment was made because that would use up a receipt book too fast. Instead, receipts were given each month when the month was fully paid. Individual payments were marked on Mr. Kelly's calendar. She advised Mr. Doucette to give Mr. Kelly thirty days notice at the end of September 2008. She knows for a fact that Mr. Doucette paid the rent on October 2 and October 25, 2008. However, there is no indication of a receipt for October 2, 2008. She believes that Mr. Doucette was intimidated and taken advantage of by Mr. Kelly. She does not recall offering \$1600.00. She does recall informing Mr. Kelly that if Mr. Doucette did owe money it would be made up. She submitted that the onus is on Mr. Kelly as the landlord to

establish any arrears. She submitted that Mr. Kelly's record keeping was a "complete shambles".

Mr. Kelly noted that he stands by his documents. He told the Commission that when Ms. Hillier went over the documents, she offered \$1600.00 to pay up. He noted that he always wrote on the calendar each time Mr. Doucette made a payment. When the full month was paid, he would write out a receipt. On a half dozen occasions, Mr. Doucette would give him an envelope with less than \$350.00 in it and provide excuses.

## **Decision**

The Commission allows the appeal for the reasons that follow.

Mr. Kelly did not provide receipts for every cash payment made by Mr. Doucette. Instead, he states he recorded these payments on a calendar and receipts were issued when a full month's rent was paid. Yet the calendar payments cannot be reconciled with the receipts. There is a gap between receipt number 50, dated April 19, 2007, noted for the month of April and receipt number 01, dated June 14, 2007 [the word "May" is crossed out], noted for the month of May. This suggests to the Commission that Mr. Kelly may very well have come to the end of his receipt book and not promptly acquired a new one.

Mr. Kelly testified that Mr. Doucette fell short of the agreed \$350.00 payment on a half dozen occasions. Logic would suggest that, if a landlord was receiving less than the agreed payment, the landlord would improve his record keeping to keep close track of the actual payment received and its timing and then prepare a letter to the tenant pointing out the shortfall. Instead, the record keeping remained poor and Mr. Kelly orally advised Mr. Doucette of the alleged shortfall in September 2008.

The Commission finds that the onus rests on a landlord to prove, on a balance of probabilities, that a tenant is in arrears with respect to the payment of rent. When payment is made in cash, receipts ought to be provided upon actual receipt of the money in order to accurately track the specific amount of such payment and the precise timing of that payment. This would then provide an accurate record and any late or incomplete payments could be readily identified. Unfortunately, receipts were issued in an apparently haphazard manner.

The Commission finds that Mr. Kelly has not established, on a balance of probabilities, that Mr. Doucette is in arrears in the payment of rent.

The Commission allows the appeal and finds that Mr. Doucette is not in arrears of rent. Accordingly, Order LD09-067 is hereby quashed and, as a result, Mr. Doucette is not required to make any further payment to Mr. Kelly.

**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 LD09-067, issued by the Director on February 26, 2009, is hereby quashed.

**DATED** at Charlottetown, Prince Edward Island, this 1st day of **June, 2009**.

**BY THE COMMISSION:**

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ernest Arsenault

Ernest Arsenault, 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.*

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