



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR09025  
Order LR10-01**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Keith MacLean against  
Order No. LD09-265 of the Director of  
Residential Rental Property, dated August  
28, 2009

**BEFORE THE COMMISSION**  
on Monday, the 11th day of January, 2010.

John Broderick, Commissioner  
Allan Rankin, Vice-Chair  
David Holmes, 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 September 11, 2009, the Commission received a Notice of Appeal filed by Keith MacLean (Mr. MacLean). Mr. MacLean appealed Order No. LD09-265 issued by the Office of the Director of Residential Rental Property (the Director) on August 28, 2009.

By way of background, Ian Stewart (Mr. Stewart) filed with the Director a Form 8 – Notice of Intention to Retain Security Deposit (Notice of Intention) dated May 11, 2009. Mr. Maclean filed with the Director a Form 9 – Application Re Determination of Security (Application) dated May 12, 2009.

The appeal proceeded to a hearing before the Commission on October 5, 2009. Mr. Stewart was present at the hearing. Shortly before the hearing commenced, Mr. MacLean advised that he was not able to be present due to business commitments, but submitted a written statement which was submitted to the Commission. Based on the contents of Mr. MacLean's written statement, the Commission adjourned the hearing until such time as he could be present in person. The hearing re-convened on November 16, 2009 and Mr. MacLean, Mr. Stewart and Kelly Stewart (Ms. Stewart) were present.

## Evidence

Mr. Maclean expressed concern that the Director allowed pictures to be filed as evidence after the original hearing. He noted that he did not see these pictures until after the Director issued Order LD09-265. Mr. Maclean submitted that he should have been provided copies of the pictures and been allowed an opportunity to comment before the Director issued Order LD09-265. Mr. MacLean submits that the Director's decision hinged on those pictures. As the Director failed to provide the parties with an opportunity to comment on the pictures, the pictures were misleading.

Mr. MacLean stated that the residential premises were not clean when he first moved in. There were ants in the cupboards and Mr. Stewart provided ant traps for this. With the exception of underneath the kitchen stove, the premises were cleaner when Mr. MacLean moved out than when he moved in.

Ms. Stewart stated that she attended the original hearing by telephone as she was sick that day. She told the Commission that she was advised that she could send the pictures to the Director after the hearing. Ms. Stewart's cleaner took the pictures and provided them to the Director. Ms. Stewart had not seen the pictures. Ms. Stewart noted that the baseboards were dirty, there was dirt under the stove and the oven was dirty.

## Decision

The Commission allows the appeal for the reasons that follow.

The Commission finds that the Director erred in procedure with respect to the admissibility of the photographs submitted following the hearing. The *audi alteram partem* [which means *hear the other side*] principle of natural justice requires a decision maker to give a party an opportunity to respond to evidence submitted by, or on behalf of, another party before a final decision is made. While the Director may allow an exhibit to be filed following a hearing, a copy of the exhibit must be provided (or, where it is not feasible to copy an exhibit, an opportunity to view the exhibit) and the parties must be provided with an opportunity to "be heard" with respect to that exhibit. While an opportunity to "be heard" could mean re-convening the hearing, it may be more convenient to send a letter to each party enclosing a copy of the exhibit and inviting a written response with respect to that exhibit. It is particularly important to provide a copy to each party and invite a response from each party in a situation, such as in the present matter, where an exhibit is submitted on behalf of, but not by, a party. In order to balance fairness and timeliness, the letter may establish a reasonable deadline for receipt of the submission. Following the expiry of the deadline, the Director would consider the additional evidence, along with any written responses or submissions received, prior to issuing an order.

In the present matter, the pictures filed after the hearing may have created a distorted impression and Mr. MacLean had no opportunity to respond to this new evidence prior to the issuance of the Director's order. In addition, as the pictures were submitted by Ms. Stewart's cleaner, Ms. Stewart had not seen the pictures. Accordingly, the Commission is concerned that it is possible that the pictures may have prejudiced the findings contained in Order LD09-265.

In Order LD09-265, the Director found that Mr. Stewart be entitled to retain the sum of \$124.00 from the security deposit. The Director made a finding of a valid claim for cleaning of \$84.00 and a valid waste disposal claim of \$30.00. The balance of \$10.00 was not accounted for. Based on the evidence provided at the hearing, the Commission disallows the waste disposal claim. Given that several of the pictures revealed deficiencies for which Mr. Stewart and Ms. Stewart did not seek a claim, the Commission hereby reduces the cleaning claim by half.

Accordingly, the Commission finds that Mr. Stewart is entitled to retain the sum of \$42.00 from the security deposit.

**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 Respondent Ian Stewart is entitled to retain the sum of \$42.00 from the security deposit.

**DATED** at Charlottetown, Prince Edward Island, this 11th day of January, 2010.

**BY THE COMMISSION:**

(Sgd.) John Broderick  
John Broderick, Commissioner

(Sgd.) Allan Rankin  
Allan Rankin, Vice-Chair

(Sgd.) David Holmes  
David Holmes, 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.*

## NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141y-SFN(2009/11)