



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR10006  
Order LR10-17**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Sean Larson and Pamela  
MacDougall against Orders LD10-058 dated  
March 4, 2010 and LD10-061 dated March 10,  
2010

**BEFORE THE COMMISSION**  
on Tuesday, the 18th day of May, 2010.

John Broderick, Commissioner  
Ernest Arsenault, Commissioner  
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 March 15, 2010 the Commission received a Notice of Appeal filed by Sean Larson and Pam MacDougall (the Appellants).

By way of background, Jerome Michelin (Mr. Michelin) representative of Red Oak Properties (the Respondent) provided to the Appellants a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated February 5, 2010. This February 5, 2010 Form 2 refers to the non-payment of rent for the months of January and February 2010.

On February 11, 2010 the Appellants filed with the Office of the Director of Residential Rental Properties (the Director) a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated February 11, 2010. This February 11, 2010 Form 2 refers to a request to reduce the monthly rent due to excessive heating costs.

In Order LD10-061 (pertaining to the issue of the non-payment of rent for January and February 2010) the Director found that:

***“IT IS THEREFORE ORDERED THAT***

1. *The lessees shall pay the lessors the sum of \$1,930.00.*
2. *Payment shall be made as follows:*
  - (a) *Commencing on March 20, 2010 and on the 20<sup>th</sup> of each month thereafter until the balance is paid in full, the lessors shall pay to the lessees the sum of \$100.00.*
  - (b) *If any monthly payment is not made on the date specified, the balance of \$1,930.00 less any payments received shall be payable forthwith and clause 2(a) of this Order shall cease to apply.*
  - (c) *It is the responsibility of the lessees to ensure that payment is received by the lessors on or before the 20<sup>th</sup> of each month if they wish clause 2(a) to remain in effect.”*

In Order LD10-058 (pertaining to the issue of a requested rent reduction due to excessive heating costs) the Director found that:

*“...the lessees have not substantiated their claims that their heating costs were excessive in the context of the rental agreement between the parties or that the heating costs are the responsibility of the lessors under the rental agreement in effect between the parties.*”

### **IT IS THEREFORE ORDERED THAT**

1. *The lessee’s application is dismissed.”*

*The Commission heard this appeal on April 13, 2010.*

### **EVIDENCE**

The Appellants testified before the Commission that they moved out on February 8, 2010 and new tenants moved into the residential premises on February 21, 2010. The Appellants submitted that the Respondents are therefore seeking “double rent” for the period February 21 to February 28. The Appellants submitted that the residential premises had been poorly insulated and difficult, and expensive, to heat. They cited a cost of \$400 to \$475 per month to heat the residential premises during the winter. They noted that they fell behind in their rent because they had a major repair bill for their van. The Appellants submitted that Order LD10-061 does not take into account the security deposit of \$475.00 which they had paid and has yet to be returned to them.

Mr. Michelin states that he never told the Appellants that it would cost \$150.00 per month to heat the residential premises. He notes that he allowed the new tenants to “move in early”.

### **DECISION**

The appeal of Order LD10-058 is denied. The Commission finds that the cost of heating the residential premises was reasonable. The Commission further finds that the Appellants were responsible for the heating of the residential premises during their tenancy.

The Commission further finds that the **Act** does not relieve a tenant from the obligation to pay rent on the basis of a financial burden incurred for other life expenses such as vehicle repairs.

However, the appeal of Order LD10-061 is allowed in part for the reasons that follow.

The Commission accepts the evidence of the Appellants that the new tenants moved into the residential premises on February 21, 2010. The Commission finds that the monthly rent was \$950.00. As the Respondent had re-let the residential premises to new tenants, effective February 21, 2010, the Appellants are not responsible for the rent for the balance of the lease. Accordingly, the Commission will credit the total rent owed with one week's rent, that is to say, the sum of \$237.50.

The Commission notes that the issue of the security deposit was not dealt with in Order LD10-061. However, the Commission finds that there is a reason for this: the Form 8 Notice of Intention to Retain Security Deposit had not been filed prior to the hearing before the Director or the issuance of either of the Director's orders. In fact, the Form 8 was only filed with the Director following the receipt of the Appellants' Notice of Appeal. The Director offered to amend Order LD10-061 to reflect the status of the security deposit; however the Appellants did not agree to this. As it was understood by the parties that the security deposit would be used to reduce the rent owing and as the Appellants did not file a Form 9 response to the Form 8, the Commission will further credit the total rent owed with the amount of the security deposit, that is to say, \$475.00.

The Commission finds that clause 2(a) of Order LD10-061, which provided terms for a monthly payment plan, no longer applies. The Appellants failed to meet the initial condition required by this payment plan, that is to say, to pay the Respondent the sum of \$100.00 commencing March 20, 2010.

Accordingly, the Commission finds that the Appellants shall pay the revised balance of \$1217.50 (\$1930.00 minus \$237.50 minus \$475.00) forthwith to the Respondent.

**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 of Order LD10-058 is denied and said Order is hereby confirmed.
2. The appeal of Order LD10-061 is allowed in part. The Appellants Sean Larson and Pam MacDougall shall pay the revised balance of \$1217.50 forthwith to the Respondent Red Oak Properties.

**DATED** at Charlottetown, Prince Edward Island, this 18th day of May, 2010.

**BY THE COMMISSION:**

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ernest Arsenault

Ernest Arsenault, Commissioner

(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)