



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR10008  
Order LR10-18**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by Tracy Phillips against Order  
No. LD10-060 of the Director of Residential  
Rental Property dated March 9, 2010

**BEFORE THE COMMISSION**  
on Monday, the 7th day of June, 2010.

Allan Rankin, Vice-Chair  
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

**IN THE MATTER of an appeal, under  
Section 25 of the Rental of Residential  
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## INTRODUCTION

On March 25, 2010 the Commission received a Notice of Appeal filed by Tracy Phillips (the Appellant).

By way of background, Anne Gallant (the Respondent) provided to the Appellant a Form 8 – Notice of Intention to Retain Security Deposit dated November 2, 2009. On November 6, 2009, the Appellant filed with the Office of the Director of Residential Rental Property (the Director) a Form 2 – Application for Enforcement of Statutory of Other Conditions of Rental Agreement dated November 6, 2010.

In Order LD10-060, the Director found that:

**“IT IS THEREFORE ORDERED THAT**

1. The lessor shall receive the security deposit and accrued interest in the amount of \$253.75.
2. Payment shall be made upon expiry of the appeal period.”

The appeal was heard by the Commission on April 23, 2010. The Appellant was present but the Respondent did not appear. After waiting a half hour, the Commission proceeded without the Respondent, as the April 12, 2010 Notice of Hearing sent to the parties clearly noted the date, time and location of the hearing.

## EVIDENCE

The Appellant told the Commission that some of the holes associated with her cable TV internet connection were already present before she moved into the premises. With respect to the condition of the floor, many of the marks in the floor were present when the Appellant moved in. The Appellant acknowledged that she did put up shelving and this created new holes in the walls for the shelving fasteners.

In the absence of the Respondent, the Commission has reviewed the various written documents previously submitted by the Respondent for the hearing before the Director. As the Director had ordered that the Respondent be permitted to retain the entire security deposit, it appears that the Respondent supports the Director's order.

## **DECISION**

The Commission allows the appeal for the reasons that follow.

In Order LD10-060 the Director allowed the Respondent a claim of \$168.00 for damage caused by holes drilled by the cable installer. The Respondent had claimed \$368.00 for such damage, but the Director reduced the claim as the Respondent had received \$200.00 compensation from the cable company for the way the cable service was installed.

The Respondent had filed numerous photographs showing holes in the baseboards and walls, gouges in the hardwood floor and other damage. The Appellant states that some of the holes drilled were present from a pre-existing TV system. The Appellant states that many of the marks on the floor were present when she moved in.

The Commission notes that the Respondent has not filed pictures to show what the premises looked like before the Appellant moved in. Photographs that purport to establish damage to premises during a tenancy need a reference point. Photographs taken after a tenant has moved out are relatively meaningless unless photographs have also been provided to show the condition of the premises before the tenant has moved in.

There is no evidence before the Commission that the Appellant added to the cable system installed by the cable company or personally directed the cable company as to which holes should be drilled and where. The Respondent had requested and received compensation from the cable company for the holes. The Commission finds that it is not appropriate for the Respondent to settle one on one with the cable company and then seek further compensation from the Appellant for holes drilled by the cable company. Accordingly, the Commission disallows the claim of \$168.00.

With respect to the holes in the wall, which the Appellant testified were made by her to install shelving, the Director would have allowed \$72.00 for labour and \$20.00 for materials for a total of \$92.00. However, the Director reduced that claim to \$85.75 as the Director only has jurisdiction over the security deposit, and, after allowing the previous claim of \$168.00, only \$85.75 remained. The Commission agrees with the Director that the Appellant was responsible for these holes. The Commission further agrees that the total claim for these holes is \$92.00. Given that the Commission disallowed the claim of \$168.00 for cable TV holes, the Commission finds that the claim for \$92.00 shall not be reduced.

**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 LD10-060 is hereby allowed.
2. The Respondent Anne Gallant shall receive the sum of **\$92.00** from the security deposit and accrued interest.
3. The Appellant Tracy Phillips shall receive the balance of the security deposit and accrued interest, that is to say the sum of **\$161.75**.

**DATED** at Charlottetown, Prince Edward Island, this 7th day of June, 2010.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Allan Rankin*  
Allan Rankin, Vice-Chair

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(Sgd.) *Ernest Arsenault*  
Ernest Arsenault, Commissioner

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(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)