



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11019
Order LR11-27**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Jim and Jeannie Morse
against Orders LD11-169 and LD11-170
issued by the Director of Residential Rental
Property dated July 20, 2011

BEFORE THE COMMISSION
on Thursday, the 8th day of September, 2011.

John Broderick, Commissioner
Michael Campbell, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

IN THE MATTER of an appeal, under
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Property Act, by Jim and Jeannie Morse
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BACKGROUND

On July 29, 2011 the Commission received a Notice of Appeal dated July 27, 2011 from Jim and Jeannie Morse (the Appellants) requesting an appeal of Order LD11-169 dated July 20, 2011, issued by the Director of Residential Rental Property (the Director). The Appellants subsequently communicated, in writing, to the Commission that they also wish to appeal Order LD11-170 dated July 20, 2011 issued by the Director.

By way of background, on June 23, 2011 Dawn and Winston MacDougall (the Respondents) filed with the Director a Form 2- Application for Enforcement of Statutory or Other Conditions of Rental Agreement regarding the payment of rent. The Director subsequently issued Order LD11-169 which states as follows:

“IT IS THEREFORE ORDERED THAT

1. *The lessors shall credit the \$200.00 overpayment in rent towards the lessors’ rent owing application in Order LD11-170.*
2. *The monthly rent for the residential premises at 130 Cedar Street, Summerside, PE shall remain at \$550.00.”*

On April 19, 2011 the Appellants filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement regarding the non-payment of rent. In this application, the Director issued Order LD11-170 which states as follows:

“IT IS THEREFORE ORDERED THAT

1. *Rent in the amount of \$350.00 is found owing by the lessees.*
2. *The lessees shall pay to the lessors rent as set out in the following payment schedule:*
 - *at least \$25.00 on or before July 20, 2011 and at least \$25.00 on or before the 20th of each month thereafter until the outstanding rent is paid in full.*
3. *If the lessees fail to make any of the payments at any time, as set out in the schedule above, the balance shall become payable in full immediately to the lessors.”*

The Commission heard this matter on August 29, 2011. The Appellants were present. Dawn MacDougall was present for the Respondents and Iris Merricks was in attendance with Ms. MacDougall.

EVIDENCE

Mr. Morse contends that Ms. MacDougall consented to the rental increase. He submitted that the security deposit only covered a portion of the actual damage cost. He submitted that he never agreed to the repayment plan set out in the Director's Order and he has never cashed any of the \$25.00 cheques given by the Respondents. He submitted that he wishes to apply, retroactively, for the allowable rental increase, given that there was no rental increase for seven years. He submitted that he should be entitled to a retroactive increase in rent given that the Respondents were entitled to a refund of an overpayment of rent. He contends that the security deposit was reduced by \$200.00.

Ms. MacDougall submitted that the \$200.00 credit for overpayment of rent did not come from the damage deposit; rather it reduced the total rent owing. She stated that, had she known "her rights", she would have never agreed to the rental increase. She contends that at the hearing before the Director, the Appellant Mr. Morse agreed to the \$25.00 per month payment schedule.

DECISION

Part IV of the **Rental of Residential Property Act** sets out the process to be followed in order to obtain a rental increase. The evidence before the Director's Rental Officer and the Commission is that the Appellants did not follow this process. Instead, the Appellants asked the Respondents if they would agree to a \$25.00 per month increase in the rent. The Respondents did agree to the increase.

The Commission finds that the Appellants unlawfully increased the rent as they did not follow the mandatory process set out in Part IV of the **Rental of Residential Property Act**. Accordingly, the Director was correct in calculating a \$200.00 overpayment of rent [\$25.00 per month for eight months] and the Director was correct in offsetting this amount against the monthly rent owed of \$550.00. As a result of the offset, the total amount of rent owed by the Respondents is \$350.00.

The Rental Officer found that the parties had agreed to a \$25.00 per month payment plan for the \$350.00 owed. Ms. MacDougall stated that there was such an agreement while the Appellants deny any such agreement.

The Commission finds that, on a balance of probabilities, the parties had agreed to such plan. However, in the event that the Appellants had not agreed to the payment plan, the payment plan was reasonable and the Commission finds that the Rental Officer had the discretion to order said plan.

The Appellants submitted on appeal that they should be able to retroactively apply for a rental increase. However, the Commission finds that the rental increase provisions of the **Rental of Residential Property Act** are premised on the concept of notice as set out in section 22:

22. Every notice of increase of rent for residential premises shall

- (a) *be in writing in the form prescribed by regulation; and*
(b) *be served on the lessee*

(i) in the case of a weekly agreement, at least three weeks before the date on which it is to take effect,

(ii) in the case of a monthly agreement, at least three months before the date on which it is to take effect. 1988,c.58,s.22.

The Commission finds that, given the notice requirements, retroactive increases in rent are not permitted under the ***Rental of Residential Property Act***.

Accordingly, the appeal is denied.

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 denied.**
2. **Orders LD11-169 and LD11-170 are hereby confirmed in their entirety.**

DATED at Charlottetown, Prince Edward Island, this **8th** day of **September**, 2011.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Michael Campbell

Michael Campbell, Commissioner

(Sgd.) Jean Tingley

Jean Tingley, 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)