



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR11034
Order LR12-02**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Kevin MacKay against Order
LD11-324 of the Director of Residential
Rental Property, dated December 20, 2011

BEFORE THE COMMISSION
on Friday, the 3rd day of February, 2012.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

**IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Kevin MacKay against Order
LD11-324 of the Director of Residential
Rental Property, dated December 20, 2011**

Order

BACKGROUND

On December 23, 2011 the Commission received a Notice of Appeal from Kevin MacKay (the Appellant) requesting an appeal of Order LD11-324 dated December 20, 2011, said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on October 24, 2011 Amber Kennific (the Respondent) filed with the Director a Form 9 – Application re Determination of Security Deposit together with a copy of a Form 8 – Notice of Intention to Retain Security Deposit dated October 21, 2011 signed by the Appellant.

The matter was heard by the Director on November 29 and December 2, 2011. In Order LD11-324 the Director ordered:

1. *The lessor is entitled to receive \$135.58 from the money held in trust to the credit of this application.*
2. *The lessee is entitled to receive the sum of \$164.42 from the money held in trust to the credit of this application.*

The Commission heard this appeal on January 19, 2012. The Appellant was present at the hearing. The Respondent did not attend.

EVIDENCE

The Appellant told the Commission that the Director did not award enough money for the repair, removal of garbage and cleaning of the residential premises. He submitted an estimate prepared by a repair and painting contractor for the removal of garbage, cleaning and repair of the residential premises (Exhibit E-13). The Appellant told the Commission that it took him a morning to haul out and dispose of the garbage and two days to clean the residential premises.

The Commission notes that the Respondent was not present to either present her side of the story or refute the evidence of the Appellant. The Commission notes that while there were photographs taken of the residential premises after the end of the tenancy, there were no photographs in evidence to establish the condition or cleanliness of the premises when the Respondent first moved in.

Based on the available evidence, the Commission finds that the Director's allowed claim for cleaning supplies and paint, totalling \$33.00, is correct. However, with respect to the hourly rate and number of hours required for the hauling of garbage, cleaning, repair and painting, the Commission accepts the estimate provided in Exhibit E-13 totalling \$350.00 for labour.

Accordingly, the Commission allows the appeal and hereby orders that the Appellant is entitled to receive the entire \$300.00 security deposit from the funds held in trust concerning this matter.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

IT IS ORDERED THAT

1. **The Appellant (lessor) is entitled to receive the sum of \$300.00 from the funds held in trust concerning this matter.**
2. **Payment of the above noted sum shall be made upon the expiry of the appeal period.**

DATED at Charlottetown, Prince Edward Island, this **3rd** day of **February**, **2012**.

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Ferne MacPhail

Ferne MacPhail, 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)