



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR12008  
Order LR12-11**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, by Doug Jones against Order  
LD12-068 dated March 9, 2012 issued by the  
Director of Residential Rental Property

**BEFORE THE COMMISSION**  
on Monday, the 19th day of March, 2012.

Allan Rankin, Vice-Chair  
Leonard Gallant, Commissioner  
Jean Tingley, Commissioner

---

# Order

Compared and Certified a True Copy

(Sgd.) Dawn Murphy

---

Acting 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 Doug Jones against Order  
LD12-068 dated March 9, 2012 issued by the  
Director of Residential Rental Property

---

# Order

---

## BACKGROUND

On March 12, 2012 the Commission received a Notice of Appeal dated the same date from Doug Jones (the Appellant) requesting an appeal of Order LD12-068 dated March 9, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on March 2, 2012 Phillip O'Halloran, as represented by Matthew O'Halloran, (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated March 2, 2012 to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated February 9, 2012.

The matter was heard by the Director on March 8, 2012. In Order LD12-068 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon, Monday, March 12, 2012.”*

The appeal was heard by the Commission on March 19, 2012. The Appellant was present and Justin Curran testified at the request of the Appellant. Matthew O'Halloran (Mr. O'Halloran) was present for the Respondent.

## EVIDENCE

The Appellant told the Commission that he had a verbal agreement with Mr. O'Halloran that he didn't have to attend the hearing before the Director as long as he made a payment the day before the hearing.

Mr. O'Halloran told the Commission that they did have such an agreement premised upon a payment of \$500.00. However, the day before the hearing, the Appellant only offered \$275.00. Mr. O'Halloran then “pleaded” with the Appellant to attend the hearing before the Director so that a payment schedule could be worked out with eviction a remedy for the landlord in the event of default of the payment schedule.

## DECISION

The Commission denies this appeal and confirms Director's Order LD12-068 in its entirety for the reasons that follow.

Verbal agreements for late payment of rent and for partial payment of rent are always problematic as two different views emerge from two different parties. Such agreements should be documented in writing and signed by the parties.

If a lessor is willing to consider late or partial payments of rent then that lessor should carefully consider having a late payment / partial payment of rent policy which would be applied to ALL tenants. Ad hoc individual "side agreements" for late payment of rent or partial payment of rent should be discouraged.

In the present appeal, there appears to have been a verbal "side agreement" for late payment and partial payment of rent. However, the agreement appears to have become a moving target when a promised partial payment of \$500.00 was reduced by the Appellant to \$275.00 leading to Mr. O'Halloran changing his mind and requiring the Appellant to appear at the Director's hearing. In effect, the unilateral variance of one term of the oral contract was responded to by another unilateral variance of a term of the oral contract.

In the present appeal, there is no indication of any error in Director's Order LD12-068.

In the present appeal, Form 4 specifies the statutory provision for the late payment of rent, that is to say, payment of all rent due within ten days of receiving the Form 4 notice.

The Commission finds that all rent due was not paid within ten days of service of the Form 4.

While there was an oral agreement, or a series of oral agreements, to provide for partial payments in order to "catch up" on the rental arrears, it appears that the terms were not adhered to and thus the statutory provisions set out in section 13 of the *Rental of Residential Property Act*, and noted on the Form 4, apply.

**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. **Director's Order LD12-068 is hereby confirmed in its entirety.**

**DATED** at Charlottetown, Prince Edward Island, this 19th day of March, 2012.

**BY THE COMMISSION:**

\_\_\_\_\_  
(sgd.) Allan Rankin  
Allan Rankin, Vice-Chair

\_\_\_\_\_  
(sgd.) Leonard Gallant  
Leonard Gallant, 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)