



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14005
Order LR14-09**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, made by Paula MacKinnon
against Order LD14-045 dated February 18,
2014 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 2nd day of April, 2014.

Maurice Rodgerson, Chair
Michael Campbell, 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, made by Paula MacKinnon against Order LD14-045 dated February 18, 2014 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On March 11, 2014 the Commission received a Notice of Appeal dated the same date from a lessee, Paula MacKinnon (the “Appellant”), requesting an appeal of Order LD14-045 dated February 18, 2014 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 31, 2013 the lessee filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated October 30, 2013. The lessor named in the Form 2 is Debbie Dennis (the “Respondent”).

The matter was heard by the Director on January 20, 2014 and in Order LD14-045 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall credit the \$357.29 towards any rent owing by the lessee.”**

The matter was heard by the Commission on March 24, 2014. The Appellant was present. The Respondent was present and was represented by legal counsel, Ryan Gallant. Christine Crain testified on behalf of the Respondent.

EVIDENCE

The Appellant filed an extensive written submission (Exhibit E-31). The Appellant reviewed her written submission in her evidence and argument before the Commission.

Mr. Gallant submitted on behalf of the Respondent that the Appellant’s evidence included many statements purportedly made by others which are hearsay. Mr. Gallant submitted that the Respondent was not in violation of section 6.1 of the *Rental of Residential Property Act* (the *Act*). He stated that the residential premises were in a good state of repair and were habitable. He submitted that additional cleaning was the responsibility of the Appellant. He requested that the Commission deny the Appellant’s claims for cleaning, lack of enjoyment and disturbances.

DECISION

The Commission allows the appeal and varies Director's Order LD14-045 by awarding a larger sum as abatement of rent.

The Commission notes that numerous emails suggest the Lessor was committing to various actions related to the apartment, such as cleaning, painting, cupboard modifications, washer and dryer, and a storm window installation. The only reference to the unit being accepted "as is" appears to be a comment made by the Appellant and not the Respondent. The Commission finds no evidence that the Respondent had specified that the unit was offered for rent on an "as is" basis.

Based on the evidence before the Commission, the Commission finds that the Appellant experienced a significant loss of enjoyment during the first three weeks of the residential tenancy. During this time period, repairs and renovations were ongoing and this disturbed the quiet enjoyment of the Appellant. The Appellant also needed to perform extra cleaning. For this loss of enjoyment, as well as cleaning supplies and labour furnished by the Appellant, the Commission awards the global sum of \$600.00 as an abatement in rent.

The Commission agrees with the finding of the Director that a rental abatement of \$200.00 shall be awarded to the Appellant due to increased heating costs arising from deficiencies (single pane windows) with respect to three windows.

Accordingly, the Commission allows this appeal and awards an abatement of rent in the total amount of \$800.00 to the Appellant. The Respondent shall credit the sum of \$800.00 towards any rent owing by the Appellant.

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 allowed and Director's Order LD14-045 is varied as stated below.**
2. **The Respondent (lessor) shall credit the sum of \$800.00 towards any rent owing by the Appellant (lessee).**

DATED at Charlottetown, Prince Edward Island, this **2nd** day of **April**, **2014**.

BY THE COMMISSION:

(Sgd. Maurice Rodgerson)

Maurice Rodgerson, Chair

(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)