



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Dockets: LR15014 and  
LR15015  
Order LR15-17**

**IN THE MATTER** of two appeals, filed  
under Section 25 of the Rental of Residential  
Property Act, of Order LD15-110 issued by  
the Director of Residential Rental Property  
dated April 1, 2015.

**BEFORE THE COMMISSION**  
on Thursday, the 25th day of June, 2015.

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

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# Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

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Commission Administrator  
Corporate Services and Appeals

**IN THE MATTER** of two appeals, filed under Section 25 of the Rental of Residential Property Act, of Order LD15-110 issued by the Director of Residential Rental Property dated April 1, 2015.

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# Order

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## BACKGROUND

On April 21, 2015, the Commission received a Notice of Appeal (Docket No. LR15015) filed by Bill Grant (“Mr. Grant”) on behalf of a lessor, Privateers Enterprises Inc. (the lessor) appealing Order LD15-110 issued by the Director of Residential Rental Property (the “Director”) dated April 1, 2015.

On April 24, 2015, the Commission received a Notice of Appeal (Docket No. LR15015) filed by a lessee, Elizabeth LeBlanc (the lessee) appealing the same Order LD15-110.

By way of background, on March 28, 2014 Privateers filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated the same date.

The matter was heard by the Director on August 19, 2014 and Order LD15-110 states as follows:

### IT IS THEREFORE ORDERED THAT

- 1. The lessee shall pay the lessor the sum of \$2190.00 on or before May 1, 2015.”***

The Commission approved the consolidation of the two appeals and proceeded to a hearing on May 15, 2015. The lessee was present at the hearing and was assisted by legal counsel, Matthew Walters (Counsel). Mr. Grant represented the lessor.

## EVIDENCE

Mr. Grant testified that the lessee signed a one year fixed term lease with the lessor and thus was responsible for rent for that term. In an effort to mitigate loss, the lessor advertised the apartment in an attempt to re-rent the apartment (Exhibit E-10). Mr. Grant noted that it is difficult to rent an apartment during the winter months.

Mr. Grant told the Commission that the lessor received the February 2014 rent and this money was placed in the lessor's bank account in February 2014. However, Exhibit E-9 reveals that on March 28, 2014 the sum of \$1,095.00 was debited from the lessor's bank account with the description "Stop payment CK cashed Feb13/14". Mr. Grant submitted that the lessor requests that an additional month's rent be paid by the lessor, namely rent for February 2014, as the lessee had put a stop payment on the February 2014 rent cheque.

Counsel for the lessee submitted that the evidence referred to by Mr. Grant was before the Director and the Director made a reasonable and fair compromise decision. Counsel submitted that the lessor was obligated to mitigate its loss and did not initially do so. Counsel submitted that if the Director did err it was that she did not place enough emphasis on the landlord's obligation to mitigate its loss.

## DECISION

The Commission allows the lessor's appeal and denies the lessee's appeal for the reasons that follow.

The Commission has very carefully examined Exhibit E-14, which was previously submitted by the lessee and was apparently before the Director prior to her issuance of Order LD15-110. Exhibit E-14 contains a copy of a non-negotiable duplicate of a cheque for \$1095.00, dated February 1, 2014. The presence of this duplicate cheque does suggest that the lessee had paid rent for February 2014. However, at the very top of Exhibit E-14 is an August 2014 entry indicating that the lessee had on January 29, 2014 "set up" a "stop amt" for "Chq Date" 1Feb14 and 1Mar14. Exhibit E-14, while submitted by the lessee, actually serves to lend further support to the lessor's position drawn from Exhibit E-9 and as a result, the Commission finds that the February 2014 rent, which was placed in the lessor's account in February, was removed from said account on March 28, 2014. Accordingly, the Commission finds that the rent for February 2014 remains unpaid.

It appears the Director's finding concerning the February 2014 rent is an oversight. Otherwise, Order LD15-110 is sound. The Director correctly and fairly noted a balance between a lessee's obligation under a fixed term rental agreement, a lessor's duty to mitigate, the dampening effect of an illegal rent increase and a delay in offering a free rent incentive. The Director's decision notes:

*In all of the circumstances, the Director finds that with reasonable efforts and at the legal rent, the premises should have been re-rented no later than May 1, 2014, and that therefore the lessee is responsible only for the rent until May 1, 2014. As she has paid the rent to February 28, 2014, the lessee therefore owes to the lessor the sum of \$1095 x 2 months = \$2190.00.*

Given that the February 2014 rent was returned to the lessee pursuant to a stop payment directive, the Commission finds that the lessee owes rent for the months of February, March and April 2014, that is to say the sum of \$1095.00 x 3 months = \$3285.00.

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

**IT IS ORDERED THAT**

1. The lessor's appeal is allowed.
2. The lessee's appeal is denied.
3. The lessee shall pay to the lessor the sum of **\$3285.00** on or before **July 31, 2015**.

**DATED** at Charlottetown, Prince Edward Island, this **25th** day of **June**, **2015**.

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

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(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)