



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR15023  
Order LR15-25**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Karl Ford against Order LD15-254 dated July 16, 2015 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**

on Wednesday, the 2nd day of September, 2015.

John Broderick, Commissioner  
Michael Campbell, 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 an appeal filed under Section 25 of the Rental of Residential Property Act by Karl Ford against Order LD15-254 dated July 16, 2015 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On July 27, 2015, the Commission received a Notice of Appeal filed by Rebecca MacLean (“Ms. MacLean”) the representative of a lessor, Karl Ford (the “Appellant”) appealing Order LD15-254 issued by the Director of Residential Rental Property (the “Director”) dated July 16, 2015.

By way of background, on April 8, 2015 Ms. MacLean filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy from a lessee, Jelisa Gibbs (the “Respondent”), by way of a finding that rent is owed and an order that an amount to be owed be paid.

A hearing was held before the Director on July 14, 2015. Order LD15-254 dated July 16, 2015 states, in part, as follows:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessee shall pay to the lessor the amount of \$413.23 on or before August 14, 2015.”*

A hearing before the Commission was held on August 12, 2015. The Appellant was present and was represented by Ms. MacLean. The Respondent was present and was accompanied by her mother Maxine Gibbs who also testified.

## EVIDENCE

Ms. MacLean testified that she and the Appellant had to “chase” the Respondent for rent. She told the Commission that the monthly rent was \$850.00. She took issue with the findings contained in Order LD15-254 and submitted that she did not state at the hearing before the Director that the \$425.00 was for September rent. She submitted that no money was paid for the August rent in the month of August 2014.

The Appellant testified that he always provides some form of receipt. Usually he provides a formal receipt from a receipt book. In the event he does not have a receipt book with him, he jots down the particulars on a slip of paper, provides that slip to the tenant, fills out a receipt later at home and then exchanges the receipt for the slip of paper.

The Appellant did acknowledge that he had agreed that the first month's rent would be reduced by \$100.00 in exchange for the Respondent cleaning the unit. The Appellant also noted that the Respondent paid a security deposit of \$300.00 on August 8, 2014. The \$425.00 paid on September 7, 2014 was applied to the rent owing for the month of August.

The Appellant noted that he is more lenient with respect to evicting a tenant for non-payment of rent than Ms. MacLean is and Ms. MacLean agreed with that assessment.

The Respondent testified that she never received a receipt for her August , 2014 partial rent payment. She acknowledges that she did not ask for a receipt. She cannot recall when in August she paid a portion of the rent. She did note, however, that she had received a receipt jotted down on a cardboard box at some time during her tenancy. She does not recall the month she received the cardboard box receipt. She did not keep that cardboard box receipt. She thought that the cardboard box receipt could have been issued in August 2014.

Maxine Gibbs testified that the cardboard box receipt was issued in September 2014.

## **DECISION**

The Commission allows the appeal and varies Order LD15-254 for the reasons that follow.

The Respondent maintains that she paid \$425.00 towards rent in August but she cannot recall the date of payment. She states she did not receive a receipt for that payment, but then thought that perhaps the cardboard box receipt was issued in August. However, she did not retain the cardboard box receipt. Maxine Gibbs testified that the cardboard box receipt was for the September 2014 partial rent payment.

While receipts do exist for a security deposit payment of \$300.00 on August 8, 2014, a \$425.00 payment toward rent received on September 7, 2014 and a \$425.00 payment toward rent on October 4, 2014, there is no documentary proof that \$425.00 was paid towards rent in August. Accordingly, the Commission must rely on the very subjective oral testimony of the parties. The Respondent maintains that she did pay \$425.00 towards rent in the month of August; however, she cannot remember when she made the payment. She states that she did have a primitive receipt on a cardboard box for a rent payment, but she cannot remember what month that primitive receipt was for, although she offers that it might have been for August. Maxine Gibbs maintains that primitive receipt was for the month of September. Unfortunately, the primitive receipt was not available.

The Commission finds that the Respondent's recall on important matters was rather poor.

Based on the evidence before the Commission, the Commission finds, on the civil standard of a balance of probabilities, that the Respondent only paid the \$300.00 security deposit during the month of August 2014 and did not make a payment of \$425.00 towards rent during that month. Therefore, the Commission finds that the Respondent owes \$425.00 more than the sum calculated by the Director. In all other respects, the Commission agrees with the findings contained in Order LD15-254.

Accordingly, the Commission finds that the Respondent [lessee] shall pay the Appellant [lessor] the sum of \$838.23 [representing the sum of \$413.23 as found owing by the Director in Order LD15-254, plus the additional \$425.00 found owing by the Commission] on or before October 2, 2015.

**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.
2. The Respondent [lessee] shall pay the Appellant [lessor] the amount of \$838.23 on or before October 2, 2015.

**DATED** at Charlottetown, Prince Edward Island, this **2nd** day of **September, 2015**.

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. Michael Campbell)

Michael Campbell, 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)