



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR15022  
Order LR15-29**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, filed by Paul Chung regarding  
Orders LD15-246 and LD15-247 issued by the  
Office of the Director of Residential Rental  
Property dated July 14, 2015.

**BEFORE THE COMMISSION**  
on Tuesday, the 29th day of September,  
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 an appeal under Section 25 of the Rental of Residential Property Act, filed by Paul Chung regarding Orders LD15-246 and LD15-247 issued by the Office of the Director of Residential Rental Property dated July 14, 2015.

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# Order

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## BACKGROUND

On July 17, 2015 the Commission received a Notice of Appeal filed by a lessor, Paul Chung (the “Appellant”) appealing Orders LD15-246 and LD15-247 both issued by the Director of Residential Rental Property (the “Director”) on July 14, 2015.

By way of background, on February 7, 2014 a lessee, Megan Paynter (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking remedy from the Appellant by way of an order to authorize the termination of the rental agreement, a finding that rent is owed, and an order than an amount found to be owed be paid.

On July 9, 2014 the Respondent filed with the Director a Form 9 – Application re Determination of Security Deposit to which was attached a Form 8 – Notice of Intention to Retain Security Deposit issued by the Appellant on July 7, 2014.

The hearing of applications was held before the Director on December 4, 2014 and December 16 2014.

Order LD15-246 dated July 14, 2015 states, in part, as follows:

***“IT IS THEREFORE ORDERED THAT***

1. *The rental agreement between the parties is terminated effective June 30, 2014.”*

Order LD15-247 dated July 14, 2015 states, in part, as follows:

***“IT IS THEREFORE ORDERED THAT***

1. *The lessee Megan Paynter shall receive \$950.00 from the security deposit funds held in trust.*
2. *Payment shall be made when the appeal period has expired.”*

A hearing before the Commission was held on August 28, 2015. The Appellant was present in person. The Respondent participated by way of telephone conference call.

## EVIDENCE

The Appellant objected to the admissibility of the Form 2 dated February 7, 2014 (Exhibit E-1) as an agreement had been reached between the parties following the filing of that document. The Appellant submits that the matter was withdrawn and the Director therefore did not inspect the residential premises.

The Appellant told the Commission that in December 2013 the Respondent informed him that there was water in the basement of the residential premises. He promptly hired a contractor but by the time the contractor saw the basement it had dried out. The contractor identified some holes and offered a quote of approximately \$1,000 to repair the basement water problem.

In January 2014 more water came in, the contractor checked the basement again, identified additional problems and offered a quote of approximately \$8,000. The Respondent and her co-tenants claimed that there was mold and wanted to leave. The contractor identified a white powder on the cement walls in the basement that was not mold. The Appellant was concerned about the possibility of mold and personally viewed the basement on February 14, 2014. There was no mold and no bad smell. The contractor installed a temporary fix, consisting of an above ground water outlet system for the sump pump [shown in various photographs] with a permanent repair planned after the snow was gone and the frost was out of the ground.

In April 2014, more water came in. The Respondent and other tenants wished to move out before the end of the lease. The Appellant told the Respondent and the other tenants that they would either have to continue paying the rent until the end of the lease or find someone to take over the lease. Nobody wanted to take over the lease and thus the Appellant informed the Respondent that she would have to pay rent for the month of July 2014.

The Appellant submitted that \$830.00 should be returned to him, as the Respondent owed rent in the amount of \$950.00 for July 2014 but he had agreed to pay her \$120.00 for past basement water cleanup efforts.

The Respondent testified that the first water infiltration occurred on December 4, 2013 with water actually squirting into the basement. The Respondent and her fellow tenants cleaned up the water and decided to stay on various conditions, one of which was payment of \$120.00 for their cleanup efforts. That sum has yet to be paid.

The Respondent testified that in June 2014 she showed the residential premises to two prospective tenants. In both cases, the prospective tenants were not interested in subletting the premises due to the smell in the basement. The Respondent described the smell as a “wet smell” and it was noticeable upstairs as well if the door leading to the basement stairs was opened, for example if she went to the basement to do laundry.

## DECISION

The Commission denies the appeal and agrees with the terms ordered by the Director in Order LD15-246 and Order LD15-247.

The Commission finds that there is no evidence to convince the Commission that there was in fact mold in the residential premises. The Commission accepts the evidence of the Appellant that there was no bad smell or mold in the basement when he personally inspected the residential premises on February 14, 2014.

The Respondent and the other tenants were very cooperative in reporting the initial water infiltration and cleaning up the water in the basement. The Appellant promptly retained an appropriate professional to investigate. The contractor performed a reasonable temporary fix given the time of year and weather conditions. The contractor's permanent repair was delayed until the summer of 2014 by an unusually harsh winter, a late spring, and a very busy schedule. The Commission commends both the Appellant and the Respondent for taking prompt and prudent action.

However, the temporary fix was not a full solution to the problem and there was a further intrusion of water in April 2014. By June 2014, an undesirable smell was present in the basement of the residential premises and this smell was documented in a June 6, 2014 email from the Appellant's local agent. While the Appellant had the best of intentions and addressed the water infiltration issue to the best of his ability, the lessor is still ultimately responsible to keep the premises in a habitable condition.

The Commission therefore finds that the wet basement smell made it impossible for the Respondent to sublet the residential premises, that the premises also became temporarily uninhabitable in June 2014 and the Commission agrees with the Director that the rental agreement is terminated effective June 30, 2014.

Accordingly, the Respondent shall receive the sum of \$950.00 from the security deposit funds held in trust, with payment to occur following the expiry of the appeal period.

**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 Orders LD15-246 and LD15-247 are hereby upheld.**
- 3. The rental agreement between the parties is terminated effective June 30, 2014.**
- 4. The Respondent shall receive \$950.00 from the security deposit funds held in trust.**
- 5. Payment of the above sum shall be made when the appeal period has expired.**

**DATED** at Charlottetown, Prince Edward Island, this **29th** day of **September, 2015**.

**BY THE COMMISSION:**

\_\_\_\_\_  
(sgd. John Broderick)

John Broderick, Commissioner

\_\_\_\_\_  
(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

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(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)