



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR18013  
Order LR18-12  
REVISED**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act filed by North River Motel  
against Order LD18-118 dated April 6, 2018  
issued by the Director of Residential Rental  
Property.

**BEFORE THE COMMISSION**  
on Friday, the 25th day of May, 2018.

John Broderick, Commissioner  
M. Douglas Clow, Vice-Chair  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan 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 filed by North River Motel against Order LD18-118 dated April 6, 2018 issued by the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On April 30, 2018 the Commission received a Notice of Appeal from Chris Daley (“Mr. Daley”) on behalf of a lessor, North River Motel (the “Appellant”), requesting an appeal of Order LD18-118 dated April 6, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 26, 2018, a lessee, Trent Delaney (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking: a finding that rent is owed; and an order that an amount found to be owed be paid.

The matter was heard by the Director on March 7, 2018 and in Order LD18-118 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

1. *The lessor shall return rent in the amount of \$1,025.00 to the lessee on or before May 7, 2018.”*

The Commission heard the appeal on May 25, 2018. Mr. Daley represented the Appellant. Ryan Wisener (“Mr. Wisener”) was also present for the Appellant. The Respondent participated by way of telephone conference call.

## EVIDENCE

Mr. Daley and Mr. Wisener acknowledged that the residential premises had problems with its roof and ceiling while the Respondent was living there. Mr. Daley and Mr. Wisener also acknowledged that sometimes the internet does not work as well as it should. They submit that there were no difficulties with the heating system as verified by a letter from Arnold MacLeod dated February 6, 2019 [sic]. They also submit that the shower was only out of commission for one day while it was being renovated. They acknowledged that it did take a while to have the shower fixed. They submitted that temperature drops in the residential premises could be explained by opening a door when entering or leaving.

The Respondent Trent Delaney (“Mr. Delaney”) explained that Mr. MacLeod’s letter was provided after the heating system had been repaired. Mr. Delaney had developed a bad cough, seen his doctor for the cough, mentioned about the mold, and showed pictures of the mold to the doctor. Mr. Delaney testified that he then had to shower off site for a ten day period due to the presence of mold within the shower surround area. Mr. Delaney testified that the ceiling was initially sagging in the bedroom, that water came in when it rained, that mold developed, and the file shows pictures of the condition of the ceiling including when parts of the ceiling collapsed onto the bed. When it rained, he had to sleep on the couch. Heat was an ongoing issue and he had to use a space heater to avoid being cold. The ceiling was eventually repaired, but within three days a new water stain began to appear.

## **DECISION**

The Commission denies the appeal and varies the return of rent ordered by the Director. While the appeal was filed by the Appellants, who were no doubt seeking a reduction in the return of rent, the filing of the appeal places this matter before the Commission at a hearing *de novo* where there is a fresh hearing and the Commission is not bound by the findings of fact made by the Director.

In the present appeal, the primary issue was the condition of the ceiling in the bedroom which leaked when it rained, was moldy and eventually collapsed upon the bed. While this matter was at its worst in January 2018, the problem had existed from the beginning of the tenancy in May 2017, becoming worse over the intervening months.

The Commission finds that the return of rent in the amount of \$1025.00 is not sufficient. The Commission hereby increases the return of rent to the total sum of \$2000.00, reflecting a return of \$1500.00 for two month’s rent for the leaking roof and ceiling problems as the primary concern, as well as a sum of \$500.00 which reflects an adjusted valuation of the other issues noted by the Director pertaining to the shower, heat and the internet service.

**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. **The return of rent ordered by the Director in Director’s Order LD18-118 is hereby varied and increased to \$2000.00.**
3. **The Appellant lessor shall return rent in the amount of \$2000.00 to the Respondent lessee on or before June 26, 2018.**

**DATED** at Charlottetown, Prince Edward Island, this **25th** day of **May, 2018**.

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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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)