

**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Dockets LR20010  
Order LR20-12**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Logan Richard against Order  
LD20-074 dated March 2, 2020 issued by the  
Office of the Director of Residential Rental  
Property.

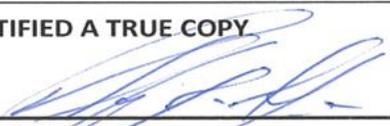
**BEFORE THE COMMISSION**  
on Tuesday, the 9th day of June, 2020.

Erin T. Mitchell, Commissioner  
M. Douglas Clow, Vice-Chair

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# Order

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Philip J. Rafuse,  
Appeals Administrator  
Island Regulatory & Appeals Commission

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Logan Richard against Order LD20-074 dated March 2, 2020 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On March 16, 2020 the Commission received a Notice of Appeal from lessee Logan Richard (the “Appellant”), requesting an appeal of Order LD20-074 dated March 2, 2020 issued by the Director of Residential Rental Property (the “Director”).

The matter was heard by the Director on February 27, 2020 and in Order LD20-074 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

1. *The lessor shall pay to the lessees the sum of \$368.51 forthwith.*
2. *In order to be in compliance with Section 6.1. of the **Rental of Residential Property Act** and Section 9. of the **Rental Accommodations Regulations**, the lessor shall:*
  - a) *Repair and remediate the ceiling in the premises’ living room and bedroom to stop any and all water leakage into those rooms; and*
  - b) *Replace the carpet in the premises’ entryway staircase.*

*This work shall be completed within four weeks of the date of this Order.*

The hearing of this appeal was delayed due to the closure of the Commission offices due to the COVID-19 pandemic.

The Commission heard the appeal on June 9, 2020 by way of telephone conference in order to meet current social distancing requirements. The Appellant participated by telephone. The Respondent Nick Tweel (“Mr. Tweel”) also participated by telephone.

## EVIDENCE

The Appellant testified that the bedroom leak began on January 26, 2020. He told the Commission that he contacted Mr. Tweel. He stated that Mr. Tweel informed him that it was caused by an ice dam and he would deal with it as soon as possible. The Appellant later contacted Mr. Tweel again but Mr. Tweel was not able to commit to a date for dealing with the matter. The Appellant stated that after that Mr. Tweel ignored him.

The Appellant referred to a January 31, 2020 letter from an Environmental Health Officer to Mr. Tweel. The Appellant also noted that the Director had inspected the premises on February 27, 2020.

The Appellant testified that he could not use his bedroom from January 26, 2020 until he moved out on May 1, 2020. His mattress was water damaged and he ended up throwing it out. He had tenants' insurance but the deductible was either \$500.00 or \$1000.00.

The Appellant acknowledges that he owes rent for the month of April 2020. The Appellant seeks to claim for 95 days loss of use of the premises.

Mr. Tweel testified that for a period of time his brother Philip Tweel was managing the property in his absence. Mr. Tweel explained that he spoke with a roofing company and was advised that the problem was just an ice dam and thus there was no hole in the roof. Mr. Tweel said that he opted to wait until the ice was gone and the roof dried out and then have the ceiling repaired. He stated by that time Covid-19 had started and he "could not do anything". When questioned by the Commission, Mr. Tweel said it would be a three to six month wait for a contractor, though he did not provide any evidence of this assertion. Mr. Tweel noted that the ceiling did not fall in.

## DECISION

The appeal is allowed and Director's Order LD20-074 is varied to increase the sum payable from the Respondent to the Appellant to \$1,842.53.

A January 31, 2020 letter from Stephanie Walzak, Environmental Health Officer, to Mr. Tweel reads in part:

*As per a conversation on January 31, 2020, you advised that you are in the process of getting the issue resolved next week. You also advised that the ceiling was not leaking anymore and just needed to be painted.*

...

*Recommendations:*

- *Ensure the hole where the leak is coming in is repaired properly to eliminate the risk of future leaks before the ceiling is painted over.*

In Order LD20-074, the Director's Rental Property Officer wrote the following observed at the February 27, 2020 inspection:

*AND WHEREAS during the inspection, the Officer took six pictures and noted the following:*

1. **Water Leakage:** *Mr. Richard's bedroom ceiling was entirely covered in discoloration resulting from water damage, with the area surrounding the room's light fixture being most prominent. The light fixture un the premises' living room also showed a small amount of water damaged around its edge.*
2. **Entryway Carpet:** *there was an overwhelming smell of cat urine in the premises' entryway staircase.*

The Commission has viewed the photographs referenced above (Exhibit E-5, pages 5 to 10 of the file).

The Commission takes official notice that the Covid-19 pandemic "lockdown" did not commence until the middle of March 2020.

The Director calculated the daily amount of rent as being \$38.79, and ordered that half that amount be returned to the Appellant for each day the bedroom at issue was uninhabitable to-date.

The Commission finds that half of the daily amount of rent is \$19.40. The Commission find that the bedroom was uninhabitable from January 27 to April 30 inclusive, a total of 95 days. Accordingly, the Commission finds that the Respondent shall pay the Appellant the sum of \$1843.00 forthwith.

The Commission notes that the Appellant acknowledged that he owed rent for the month of April 2020. The parties may agree to offset rent owing from the sum of \$1843.00. If the parties cannot agree, the matter of rent owing will need to be dealt with through the Director.

**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. **Director's Order LD20-074 is varied in part to read: *The lessor [Respondent] shall pay to the lessee [Appellant] the sum of \$1843.00 forthwith.***
3. **In all other respects, Director's Order LD20-074 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, this 9<sup>th</sup> day of June, 2020.

**BY THE COMMISSION:**

*(sgd.) Erin T. Mitchell*

Erin T. Mitchell, Commissioner

*(sgd.) M. Douglas Clow*

M. Douglas Clow, Vice-Chair

## 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.*