



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR20012
Order LR20-15**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by MacDonald Duru against
Order LD20-091 and Order LD20-092 both
dated March 13, 2020 and issued by the Office
of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Monday, the 6th day of July, 2020.

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

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 MacDonald Duru against Order LD20-091 and Order LD20-092 both dated March 13, 2020 and issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On April 1, 2020 the Commission received a Notice of Appeal from lessor MacDonald Duru (the “Appellant”), requesting an appeal of Orders LD20-091 and LD20-092 both dated March 13, 2020 and issued by the Director of Residential Rental Property (the “Director”).

The matter was heard by the Director on March 6, 2020.

In Order LD20-091 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- “1. *The lessee's application for a return of rent is allowed.*
2. *The lessor shall pay \$210.00 to the lessee on or before April 10, 2020.*
3. *The lessee's rent shall be reduced from \$420.00 to \$350.00 beginning on April 1, 2020.*
4. *The lessor shall not increase the lessee's rent to \$420.00 for as long as the lessor continues to occupy a common area of the premises as a living space.*
5. *The internet bill shall be split by the number of people occupying the premises.”*

In Order LD20-092 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- “1. *The lessee's application for a return of rent is allowed.*
2. *The lessor shall pay \$210.00 to the lessee on or before April 10,2020.*
3. *The lessee's rent shall be reduced from \$420.00 to \$350.00 beginning on April 1, 2020.*

4. *The lessor shall not increase the lessee's rent to \$420.00 for as long as the lessor continues to occupy a common area of the premises as a living space.*

5. *The internet bill shall be split by the number of people occupying the premises.”*

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 30, 2020 by way of telephone conference in order to meet current social distancing requirements. The Appellant MacDonald Duru (“Mr. Duru”) participated by telephone. The Respondents Paakow Wobil (“Mr. Wobil”) and Manan Photawala (“Mr. Photawala”) also participated by telephone.

EVIDENCE

Mr. Duru testified that he had spoken with both Mr. Wobil and Mr. Photawala to explain that he was facing financial hardship and that he needed to move in a fourth tenant. Mr. Duru testified that Mr. Wobil and Mr. Photawala both agreed to allow a fourth tenant to move in. Mr. Duru explained that he then lived in the downstairs common area and the fourth tenant moved into his old bedroom.

Mr. Duru acknowledged that he did not have a written agreement from Mr. Wobil and Mr. Photawala for a fourth tenant to move in.

Mr. Wobil and Mr. Photawala explained that they were initially concerned that they were required to split the cost of internet service three ways when there were four people living there. They contacted the Director about this and in so doing became aware that they were overpaying rent as the rent should also be divided four ways not three ways. They testified that Mr. Duru was not paying any rent and was not paying his share of the internet. They also explained that they were unable to use the common area downstairs as Mr. Duru was occupying it as if it was his own room.

DECISION

The appeal is denied and Director’s Orders LD20-091 and LD20-092 are confirmed.

The Commission finds that, while the Respondents Mr. Wobil and Mr. Photawala did orally agree to allow Mr. Duru to move a fourth tenant into the premises, there was no agreement, oral or written, as to how the cost of the internet would be divided.

Since there was no written agreement setting out the financial terms of adding a fourth tenant, the Respondents assumed that with four occupants the cost of internet would now be divided four ways rather than three ways.

The Commission agrees with the Director that the cost of the internet should be divided based on the number of occupants.

In addition, the Commission finds that the Respondents lost the use of the downstairs common area which reduced their use and enjoyment of the premises. The Respondents should be compensated for this loss.

Accordingly, the Commission agrees that the Respondents are entitled to a return of rent previously paid and a reduction of rent going forward.

The Commission finds that Director's Orders LD20-091 and LD20-092 provide a reasonable return of rent and reduction of rent going forward, as well as a reasonable division of the cost of the internet bill.

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 LD20-091 and LD20-092 are confirmed.**

DATED at Charlottetown, Prince Edward Island, this **6th day of July, 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.