



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: August 12, 2026

Dockets: LR26036

Type: Rental Appeal

INDEXED AS: Gerry MacDonald v. Patrick Steven Flanagan

2026 PEIRAC 50 (CanLII)

Order No: LR26-38

BETWEEN:

Gerry MacDonald (the “Landlord”)

Appellant

AND:

Patrick Steven Flanagan (the “Tenant”)

Respondent

ORDER

Panel Members:

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

Kerri Carpenter, Vice-Chair
Gordon MacFarlane, Commissioner

A. INTRODUCTION

1. This appeal and cross-appeal were heard by the Commission on June 22, 2026, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that:
 - The Occupation Notice is invalid and the Tenant can continue living in the Unit.
 - The Unit’s lawful rent is \$680.49 effective August 1, 2025.
 - The Landlord must pay the Tenant the amount of \$3,783.74 by July 22, 2026 because of unlawful rent increases.
 - The Landlord must pay the Tenant any May 2026 rent that the Tenant has already paid exceeding \$680.49 by July 22, 2026.
 - dismissing the Tenant’s claims for additional compensation relating to lawn maintenance and electricity costs; and
 - ordering the remaining relief set out in Order LD26-166.

B. BACKGROUND

2. This appeal and cross-appeal concern a rental unit located at 40.5 Meadowbank Road, Cornwall, PEI (the “Rental Unit”).
3. The Rental Unit is a two-bedroom, one-bathroom rental unit located in the lower portion of an over-under duplex that the Landlord has owned for about 28 years (the “Residential Property”).
4. The Landlord and the Tenant entered into an oral, monthly tenancy agreement that started on October 31, 2005. Rent in the original amount of \$610.00 was due on the first day of the month and a security deposit of \$305.00 was paid.
5. On February 1, 2026 the Landlord hand-delivered to the Tenant a *Form 4(B) Eviction Notice* with a vacate date of July 1, 2026 for repairs and renovations (the “Repairs Notice”).
6. On February 2, 2026 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office disputing the Repairs Notice.
7. On February 17, 2026 the Landlord withdrew the Repairs Notice and this earlier dispute ended.
8. On February 28, 2026 at 5:23 p.m. the Landlord emailed the Tenant a *Form 4(B) Eviction Notice* with a vacate date of July 1, 2026 for a family member’s occupation of the Rental Unit (the “Occupation Notice”).

9. On March 3, 2026 the Tenant filed a *Form 2(A) Tenant Application to Determine Dispute* with the Rental Office disputing the Occupation Notice, making financial claims against the Landlord and requesting repairs, which was later amended on March 6, 2026 (the "Application").
10. On March 12, 2026 the Rental Office sent the parties notice of a teleconference hearing rescheduled for April 28, 2026.
11. On March 24, 2026 the Rental Office sent the parties notice of a teleconference hearing rescheduled for April 23, 2026.
12. On April 23, 2026 the Tenant, the Tenant's witness ("KW"), the Landlord and the Landlord's witness ("MM") participated in a Rental Office teleconference hearing. MM is the Landlord's son.
13. On May 22, 2026, the Rental Office issued Order LD26-166 which ordered:
 1. The Occupation Notice is invalid, and the Tenant can continue living in the Unit.
 2. The Unit's lawful rent is \$680.49 effective August 1, 2025.
 3. The Landlord must pay the Tenant the amount of \$3,783.74 by July 22, 2026 because of unlawful rent increases.
 4. The Landlord must pay the Tenant any May 2026 rent that the Tenant has already paid exceeding \$680.49 by July 22, 2026.
 5. The Landlord must repair or replace the Unit's screen door with a properly functioning screen door. Or, the Landlord must install a steel door with a window that allows air into the Unit. The Landlord must complete this work by July 22, 2026.
 6. The Landlord must ensure that he follows the requirements provided by the Provincial Fire Marshall regarding the Residential Property.
14. The Landlord appealed Order LD26-166 on June 10, 2026.
15. The Tenant appealed Order LD26-166 on June 10, 2026.
16. The Commission heard the appeal and cross-appeal on June 22, 2026, by way of telephone conference. The Landlord was represented by Rebekah MacDonald ("Landlord's Representative"). The Tenant, Patrick Steven Flanagan, attended on his own behalf.
17. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the "Act").

C. DISPOSITION

18. The Landlord's appeal is allowed in part. The Commission substitutes a finding that the Occupation Notice is valid. The remainder of Order LD26-166 is affirmed. The Tenant's cross-appeal is dismissed.

D. ISSUES

19. The issues are identified as follows:
- Must the Tenant and all occupants vacate the Rental Unit due to the Occupation Notice?
 - What is the lawful rental rate presently and was the rental rate increased unlawfully?
 - Is the Tenant entitled to any further financial compensation?

E. SUMMARY OF EVIDENCE

Landlord's Submissions & Evidence

20. The Landlord seeks to end the tenancy under the Occupation Notice based upon his son's intention to move into the Rental Unit for at least one year and pursuant to section 62(1) of the *Act*.
21. The Landlord's Representative confirmed the evidence that they submitted at the Rental Office hearing and indicated that they acted in good faith. Their intention was always that their son would move into the Rental Unit as he needed a place to live and that they would be entering into a 1-year lease with him.
22. The Landlord's Representative testified that the Landlord did not deliberately increase the rent unlawfully and that they were of the understanding that the rate they charged had been approved by an agency of the Government of Prince Edward Island on behalf of the Tenant.
23. The Landlord's Representative agreed with the calculation in the Rental Office's Order but submitted that the Landlord had not increased the rental rate in a number of years and even with the increase, the rent remains low, does not cover the bills for the Rental Unit and does not reflect the reality of the rental situation in PEI.

Tenant's Submissions & Evidence

24. The Tenant confirmed the evidence he provided at the Rental Office Hearing and submitted that he should not be evicted at 65 years old and that he has been treated poorly by the Landlord.
25. The Tenant submitted that he did not realize he was being overcharged for rent and did not agree with the Landlord that it was a "mistake". He submits that the rates are apparent on IRAC's website and that the Landlord did not fill out the forms properly, despite him advising him to how to do so.

26. The Tenant is also seeking compensation for lawn maintenance at the Rental Property which he did for over 19 years without payment.
27. The Tenant testified that the heat pump was forced upon him, and his rent was supposed to include heat. Upon questioning, he confirmed that the oil furnace was not removed and he has access to oil heat if he chooses.
28. The Tenant is seeking the same compensation that was ordered by the Rental Office for rent and is further seeking compensation for grass cutting and electricity that was denied by the Rental Office.

F. ANALYSIS

29. Section 62(1) of the *Act* permits a landlord to terminate a tenancy where the landlord, the landlord's spouse, child or parent genuinely intends to occupy the rental unit as their primary residence. The statutory purpose is to balance a tenant's security with a landlord's legitimate right to recover possession for *bona fide* personal or family occupation. The burden rests upon the Landlord to establish, on a balance of probabilities, that the notice was issued in good faith and that the intended occupation is genuine rather than for another purpose not allowed under the *Act*.
30. The principles governing good-faith occupation under section 62(1) of the *Act* are consistent with those that existed under section 15(1)(a) of the former *Rental of Residential Property Act*. Under both legislative schemes, the central question is whether the landlord has demonstrated a sincere and honest intention that the identified family member will occupy the premises as a residence, and whether that intention is supported by clear, cogent and credible evidence.
31. The Commission is satisfied that the Landlord has met that burden. Before both the Residential Tenancy Office and the Commission, the Landlord and Landlord's Representative consistently maintained that possession of the Rental Unit was required so that his son could reside there. The Landlord's Representative testified that the Landlord's son, who was about to turn 21, required housing and intended to occupy the Rental Unit as his primary residence for at least one year under a residential tenancy agreement with the Landlord. The Commission found this evidence to be straightforward, consistent and credible.
32. The Tenant expressed understandable concern regarding the hardship associated with the termination of a tenancy that has existed since 2005 and emphasized his age, long-term residence and lawn care he had provided at the property over many years. While these considerations are sympathetic, section 62 of the *Act* does not require the Commission to balance hardship against a landlord's statutory right to recover possession where the legislative requirements have been satisfied. Once the Commission is satisfied that the statutory grounds exist and the Notice has been given in good faith, personal hardship cannot override an otherwise lawful notice.

33. The Commission was not presented with persuasive evidence demonstrating that the stated intention to house the Landlord's son was not genuine or that the Notice was issued for an ulterior purpose or otherwise circumvent the *Act*.
34. The Commission therefore concludes that the Landlord has established, on a balance of probabilities, that:
- His son genuinely intends to occupy the Rental Unit;
 - The intended occupation is expected to continue for at least one year;
 - The Occupation Notice was served in good faith for the purpose contemplated by section 62(1) of the *Act*; and
 - There is insufficient evidence that the Notice was issued for an improper purpose or in bad faith.
35. Applying the balance of probabilities standard required under section 62(1), the Commission is satisfied that the Landlord established a genuine intention that his son occupy the Rental Unit. The Commission therefore respectfully reaches a different conclusion from the Rental Office on the evidence.
36. The Landlord does not dispute the Rental Office's calculation of the lawful rent or the amount of rent overpaid by the Tenant. Rather, the Landlord submitted that the unlawful increases resulted from their misunderstanding of the applicable legislation and/or the approved rental rate.
37. The Commission accepts that the Landlord may genuinely have misunderstood the statutory requirements governing rent increases. However, compliance with the *Act* is mandatory. A rent increase that has not been approved in accordance with the *Act* is ineffective regardless of the Landlord's intention or good faith. The Rental Office therefore correctly determined both the lawful rent and the amount recoverable by the Tenant.
38. The Commission therefore agrees with the Rental Office that the lawful rent effective August 1, 2025 was \$680.49 and that the Tenant is entitled to reimbursement of the amounts paid in excess of the lawful rent.
39. With respect to the Tenant's cross-appeal, the evidence established only that the Tenant voluntarily performed lawn maintenance over many years. There was insufficient evidence of an agreement that those services would be compensated or of the value of any such services.
40. Similarly, the evidence did not establish that installation of the heat pump altered the Landlord's contractual obligations. The Tenant acknowledged that the oil furnace remained available for use. There was therefore no basis for reimbursement of electricity costs.
41. Accordingly, the Commission dismisses the Tenant's cross-appeal and affirms the remainder of Order LD26-166.

G. CONCLUSION

42. The Landlord's appeal is allowed in part. The Commission finds the Occupation Notice to be valid and the Tenant must vacate the Rental Unit in accordance with this Order. The Tenant's cross-appeal is denied and the Rental Office Order is upheld in all other respects.

IT IS ORDERED THAT

1. The Occupation Notice dated February 28, 2026 is declared valid. The Tenant and all occupants shall vacate the Rental Unit no later than August 26, 2026.
2. The Rental Unit's lawful rent is \$680.49 per month, effective August 1, 2025.
3. The Landlord must pay the Tenant \$3,783.74 by August 26, 2026, for unlawful rent increases.
4. The Landlord must pay the Tenant any rent beyond May, 2026 that was paid exceeding \$680.49 by August 26, 2026.

DATED at Charlottetown, Prince Edward Island, 12th day of August , 2026.

BY THE COMMISSION:

[sgd. Kerri Carpenter]
Kerri Carpenter

[sgd. Gordon MacFarlane]
Gordon MacFarlane

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.