



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: September 10, 2026

Dockets: LR26035

Type: Rental Appeal

INDEXED AS: Shane Byrne v. George Dow

2026 PEIRAC 56 (CanLII)

Order No: LR26-44

BETWEEN:

Shane Byrne (the “Tenant”)

Appellant

AND:

George Dow (the “Landlord”)

Respondent

ORDER

Panel Members:

Gordon MacFarlane, Commissioner
Kerri Carpenter, Vice Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was 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 basement is excluded from the lease between the parties.

B. BACKGROUND

2. This appeal concerns a rental unit located at 1 – 70 Prince Street, Charlottetown, PEI (the “Rental Unit”).
3. The Rental Unit is a two-bedroom, one-and-a-half-bathroom apartment in a three-unit building (the “Residential Property”), owned by the Landlord and managed by the Landlord’s Representatives (the “Representatives”).
4. On May 4, 2021, the parties signed a written, fixed-term tenancy agreement, which continued on a monthly basis. Rent in the amount of \$1,343.00 is due on the first day of the month. A \$1,000.00 security deposit was paid at the beginning of the tenancy.
5. On March 31, 2026, the Tenant e-mailed the Rental Office and the Representatives a *Form 2(A) Tenant Application to Determine Dispute* seeking compensation.
6. On April 29, 2026, the Representatives served the Tenant with a *Form 4(A) Eviction Notice* with a vacate date of May 31, 2026 (the “Notice”) for subletting the Rental Unit without the Landlord’s consent. The particulars of termination state:

“Above named tenant is the only name on the lease agreement and currently has another tenant occupying the unit with him, without landlord approval. In addition, is having a 3rd tenant move in on May 1st without landlord approval. Pls see email that goes with this eviction.”

7. On April 30, 2026, the Tenant e-mailed the Rental Office and the Representatives an amended *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) disputing the Notice and seeking compensation.
8. On May 12, 2026, the Rental Office e-mailed the parties notice of a tele-hearing scheduled for May 26, 2026.
9. On May 26, 2026, the Tenant, the Tenant’s witness (“RH”), the Landlord and the Representatives participated in the tele-hearing before the Rental Office.
10. On June 5, 2026, the Rental Office issued Order LD26-186 which ordered that the tenancy between the parties will continue in full force and effect. The Order further determined that the basement did not form part of the Rental Unit or the tenancy agreement.
11. The Tenant appealed Order LD26-186 on June 5, 2026 and is seeking an Order that the basement forms part of the Rental Unit under the tenancy agreement, with the further result that the Landlord would be required to provide 24 hours’ notice before entering that area.

12. The Commission heard the appeal on June 22, 2026, by way of telephone conference. The Tenant, Shane Byrne, attended on his own behalf. The Landlord, George Dow, was represented at the hearing by legal counsel Kyle Kennedy and Bill Dow. Linda Dow and Anne Dow-Keoghan attended as the Representatives and witnesses for the Landlord.
13. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the "*Act*").

C. DISPOSITION

14. The Appeal is dismissed and Order LD26-186 is confirmed.

D. ISSUES

15. Does the basement form part of the Rental Unit under the tenancy agreement between the parties?
16. Is the Tenant owed compensation for the dehumidifier's electricity use in the basement?
17. Must the Landlord give 24-hour notice to use the rear door entranceway?

E. SUMMARY OF EVIDENCE

Tenants Evidence

18. The Tenant is seeking that the Rental Office's Order be overturned to recognize the basement as a related facility included in his Rental Unit under the tenancy agreement based on his continuous physical access to the basement, his use of it for storage, and his responsibility for electricity supplying a dehumidifier in the basement.
19. The Tenant relies upon the definitions of "rental unit" and "tenancy agreement" in the *Act* and argues that the basement constitutes a related facility included in the tenancy agreement under subsections 1(1)(o) and 1(1)(w) of the *Act*.
20. The Tenant is seeking that the Commission's Order state that the Tenant has the legal right to utilize the basement for his personal space and storage.
21. The Tenant submitted that he always understood the basement to be part of the lease to his Rental Unit.
22. The Tenant is also seeking compensation for electricity generated by the dehumidifier which was wired to his electrical panel. He submits he performed a breaker panel test and found the dehumidifier runs to his meter and he has been paying for same over during the course of his tenancy. The Tenant argues that he should not be paying for electricity for the basement if it is not part of his Rental Unit and therefore seeks compensation for same.
23. The Tenant further seeks an Order from the Commission stating that that the Landlord is restricted from entering the rear door passage without providing 24-hour written notice, except during a structural emergency.

Landlords' Evidence

24. The Representatives submit that the Tenant was given access through the rear door passage to the Rental Unit in good faith, primarily for convenience, including access to the parking area at the back of the property. The Representatives submit that access was never meant to grant the Tenant access to and/or use of the basement.
25. The Representatives submit that for over 40 years of ownership, the basement has never formed part of any of the rental units in the Residential Property, including the Tenant's Rental Unit. The Representatives argue that the basement is exclusively for the Landlord's use.
26. The Representatives argue that 24-hour notice is not required to do tasks around the Residential Property or enter the basement through the rear door passage which, it submits, is not part of the Tenant's Rental Unit.
27. The Representatives argue that access to the basement is through an area that is separate from the entrance to the Tenant's Rental Unit.
28. The Representatives submit that around the end of April, 2026, the Tenant and/or occupants of his Rental Unit began stacking a significant volume of contents in the basement and provided photos of same.
29. The Representative argue that the basement is not included as part of the Tenant's Rental Unit under the tenancy agreement and the Tenant has no legal right to use or occupy the basement; as such, he is not allowed to store personal belongings there. The Representative also submits that the Tenant's belongings are a fire and safety hazard and obstructs access to critical systems including the furnace and electrical systems.
30. The Landlord's witnesses testified that they were not aware of the dehumidifier's existence and according to a report of Hansen Electric it was set at 50% and its power was not turned "on" the two times they observed it.
31. The Representatives submit that they are having work completed to wire all electricity in the basement connected to the Landlord's electrical panels.
32. The Representatives submit that Order LD26-186 should be upheld regarding the basement and compensation costs, and that 24-hour notice is not required of them to enter the rear door passage to the basement.

F. ANALYSIS

33. At the beginning of the appeal hearing, the Landlord's legal counsel raised a preliminary issue stating that the Commission did not have jurisdiction to hear the new issues raised by the Tenant at the hearing.

34. The Commission disagreed with this submission given that an appeal before the Commission is an appeal by way of a re-hearing and proceeded to hear submissions from both parties on the appeal.
35. The central issues on appeal are whether the basement forms part of the Rental Unit under the tenancy agreement and whether the Tenant is entitled to compensation for electricity consumed by a dehumidifier located in the basement which was wired to his electrical panel.
36. The Tenant submits that the basement should be considered part of the Rental Unit because he had continuous physical access to it through the rear door entrance, always considered it to be part of his lease, stored personal property there, and paid for electricity supplying a dehumidifier and some lighting which was connected to his electrical panel. The Tenant submits these circumstances give rise to an implied term of the tenancy agreement permitting him to use the basement as part of the leased premises and that it is a related facility.
37. The Commission is not persuaded by this submission. While the Tenant had physical access to the basement area through the rear entrance, mere physical access does not establish that an area forms part of the leased premises. The evidence demonstrates that the rear entrance was provided as a convenient means of entering and exiting the Tenant's Rental Unit from the parking area. The Commission accepts the Landlord's evidence that this access was not intended to give exclusive possession or use of the basement itself.
38. The Tenant relies upon the definitions of "rental unit" and "tenancy agreement" in section 1 of the *Act*. While a tenancy agreement may include implied terms and related facilities, those provisions do not convert every area to which a tenant has physical access to being part of the rented premises. Whether an area forms part of a rental unit depends upon the terms of the tenancy agreement, the intention of the parties, and the surrounding circumstances. On the evidence before the Commission, the basement remained an area retained by the Landlord for maintenance, mechanical systems, and building operations, along with storage by the Landlord, rather than a facility intended for the Tenant's exclusive use.
39. The Commission also considers the evidence that the basement has historically remained under the Landlord's possession and control and has not formed part of residential tenancies within the building. While this historical practice is not determinative of the present tenancy agreement, it supports the conclusion that the basement was not intended to be included in the leased premises. The basement contains the building's mechanical systems and has been under the Landlord's use and control for forty years. Further, the written tenancy agreement contains no provision granting the Tenant exclusive possession or use of the basement.
40. It is the Commission's opinion that mere tolerance of occasional storage or unrestricted access does not establish an implied contractual term granting exclusive use of an area otherwise retained by the Landlord.
41. The Commission is not persuaded that the basement constitutes a "related facility" within the meaning of the *Act*. The evidence establishes that the basement served primarily as

an area housing the building's mechanical and electrical systems and remained under the Landlord's control. It was not a facility provided for the Tenant's ordinary use or enjoyment under the tenancy agreement.

42. The Commission therefore agrees with the Rental Office's conclusion that the basement does not form part of the Rental Unit under the tenancy agreement and that the Tenant has no continuing right to occupy or use the basement for personal purposes or storage.
43. With respect to the claim for compensation for electricity use, the Commission accepts the evidence that the dehumidifier was connected to the Tenant's electrical meter. However, the burden rests with the Tenant to establish, on a balance of probabilities, that compensable losses were incurred and the amount of those losses. The evidence before the Commission does not establish when the dehumidifier was first placed in the basement, the periods during which it operated, its electrical consumption or the resulting costs attributable to the Tenant. Although the Tenant performed a breaker test confirming the dehumidifier's connection with his electrical panel, that evidence alone does not establish the extent of any financial loss.
44. The Commission therefore agrees with the Rental Office that there is insufficient evidence to reliably quantify any electricity costs attributable to the dehumidifier. An award of compensation cannot be based upon speculation or estimates unsupported by sufficient evidence.
45. To the extent the Tenant may have paid a modest amount of electricity attributable to the dehumidifier and possibly some lighting over the course of the tenancy, the Commission finds that the evidence does not establish the amount with sufficient certainty to justify a monetary award. In any event, the Commission finds any incidental electrical costs were substantially offset by the practical benefit that the Tenant received through the use of the basement for his own storage, notwithstanding that the area did not form part of the leased premises.
46. The Representatives advised that corrective electrical work has been undertaken to transfer the circuits in question to the Landlord's electrical panel. While that evidence is relevant to the circumstances going forward, it does not affect the Commission's determination of the Tenant's claim for compensation.

G. CONCLUSION

47. The Commission concludes that the Tenant's access through the rear entrance, use of the area for storage, and payment of electricity for certain basement circuits does not establish a legal entitlement to exclusive possession or use of the basement and therefore upholds the Rental Office's Order LD26-186.
48. The Commission further concludes that the Tenant has not established, on a balance of probabilities, entitlement to compensation for electricity costs. Although some basement electrical loads were connected to the Tenant's electrical service, the evidence does not permit a reliable determination of the amount of any resulting loss.

49. Finally, the Commission does not agree that 24-hour notice is required for the Landlord or its representatives to enter the rear door passageway to the basement. Section 23 of the *Act* requiring notice before entry applies to entry into the Rental Unit. Because the rear passageway and basement do not form part of the Rental Unit, the statutory notice provisions do not apply when the Landlord accesses those areas.

IT IS ORDERED THAT

1. Accordingly, the Appeal is dismissed and Order LD26-186 is confirmed.
2. The basement does not form part of the Rental Unit under the tenancy agreement between the parties.
3. The Tenant shall cease using the basement for personal storage and shall remove all personal property belonging to the Tenant or any occupant of the Rental Unit from the basement no later than September 30, 2026.
4. The Tenant's claim for compensation for electricity costs is dismissed.
5. The Landlord is not required to provide 24-hour notice to the Tenants to use the rear door passageway to enter the basement.

DATED at Charlottetown, Prince Edward Island, 10th day of September, 2026.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]

Gordon MacFarlane

[sgd. Kerri Carpenter]

Kerri Carpenter

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.