



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR08001  
Order LR08-02**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by John H. Gallant against  
Order No. LD07-261 of the Director of  
Residential Rental Property, dated November  
13, 2007.

**BEFORE THE COMMISSION**  
on Tuesday, the 5th day of February, 2008.

Maurice Rodgerson, Chair  
John Broderick, Commissioner

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# Order

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# Order

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On January 9, 2008, the Commission received a Notice of Appeal filed by John H. Gallant (the Appellant). The Appellant appealed Order No. LD07-261 issued by the Office of the Director of Residential Rental Property (the Director) on November 13, 2007.

At issue is whether the Appellant filed his appeal within the time period set out under the **Rental of Residential Property Act** (the **Act**). Subsections 25(1) and 25(3) of the **Act** read as follows:

*25. (1) Any party to a decision or order of the Director, if the party has appeared or been represented at the hearing before the Director, may appeal therefrom by serving on the Commission, **within twenty days after receipt of the decision or order of the Director**, a notice of appeal in the form prescribed by regulation. [Emphasis added]*

...

*(3) Where an appeal is not made under subsection (1), the parties are deemed to have accepted the decision of the Director and the decision is final. 1988,c.58,s.25; 1990,c.53,s.7; 1991,c.34,s.1,2; 1991,c.18,s.22 {eff.} Nov. 4/91.*

Subsection 33(3) reads as follows:

*33. (3) Where a document is delivered by ordinary mail, it is deemed to have been delivered on the third day after the date of mailing. 1988,c.58,s.33; 1991,c.18,s.22 {eff.} Nov. 4/91.*

The Commission finds that the Notice of Appeal form was filed on the 57<sup>th</sup> day following the issuance of Order LD07-261, well beyond the statutory appeal period.

However, the Commission notes that the Appellant sent two letters to the Director after order LD07-261 was issued and prior to filing his appeal. Accordingly, the Commission will consider whether one of these letters may be considered a notice of appeal, given that a notice of appeal form is no longer prescribed by regulation.

The Commission has had the opportunity to review the file provided by the Director.

On November 14, 2007, Nancy Gallant, spouse of the Appellant, spoke with the Director's Information Officer. The Information Officer explained the appeal process, reviewed the statutory appeal period and gave Ms. Gallant the name of a Commission staff contact person for appeals.

On November 21, 2007, the Director received a letter from the Appellant. This letter restated the Appellant's position originally expressed at the hearing before the Director. The Appellant's letter also requested the return of "receipts" filed at the hearing before the Director.

On November 30, 2007, a letter was sent from the Director to the Appellant enclosing a copy of a sales quote and 18 photographs.

On December 20, 2007, the Director received another letter from the Appellant again restating his position expressed at the hearing.

On December 24, 2007, the Director called the Appellant regarding his December 20, 2007 letter. The Director suggested that the Appellant contact the Commission and provided the name of a staff contact person.

On January 9, 2008 the Appellant filed his Notice of Appeal.

The Commission finds that the Director provided the Appellant and his spouse with information on the appeal process. In spite of this information, the letters sent by the Appellant did not request an appeal and were addressed to the Director, not the Commission.

The Commission finds that the letters from the Appellant received by the Director on November 21, 2007 and December 20, 2007 cannot be considered to be a notice of appeal.

As the Notice of Appeal was not received by the Commission until after the expiry of the appeal period, subsection 25(3) of the **Act** applies and this appeal is hereby dismissed.

**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 hereby dismissed.**
2. **Order LD07-261 issued by the Office of the Director of Residential Rental Property on November 13, 2007 remains in full force and effect.**

**DATED** at Charlottetown, Prince Edward Island, this 5th day of February, 2008.

**BY THE COMMISSION:**

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Maurice Rodgerson, Chair

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John Broderick, 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.*