



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR08009
Order LR08-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Darren MacLennan against
Order No. LD08-226 of the Director of
Residential Rental Property, dated June 3,
2008.

BEFORE THE COMMISSION
on Monday, the 30th day of June, 2008.

Maurice Rodgerson, Chair
Brian J. McKenna, Vice-Chair

Order

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, by Darren MacLennan against Order No. LD08-226 of the Director of Residential Rental Property, dated June 3, 2008.

Order

On June 17, 2008, the Commission received a Notice of Appeal filed by the Appellant Darren MacLennan (Mr. MacLennan). Mr. MacLennan appealed Order No. LD08-226 issued by the Office of the Director of Residential Rental Property (the Director) on June 3, 2008.

At issue is whether Mr. MacLennan may appeal Order LD08-226 pursuant to the right of appeal 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 has had the opportunity to review the file provided by the Director.

The Commission finds that Mr. MacLennan was not present at the hearing before the Director held on November 13, 2007. Further, the Commission finds that Mr. MacLennan was not represented at the hearing before the Director.

The Commission also finds that Mr. MacLennan was deemed to have received the October 29, 2007 Notice of Hearing on November 1, 2007, pursuant to subsection 33(3) of the **Act**.

Subsection 25(1) of the **Act** provides a conditional right of appeal. The right to appeal is available only if the appellant was present or was represented at the hearing before the Director.

As Mr. MacLennan was neither present at the November 13, 2007 hearing before the Director nor represented at that hearing, subsection 25(1) of the **Act** does not provide him with a right of appeal 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 LD08-226 issued by the Office of the Director of Residential Rental Property on June 3, 2008 remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 30th day of June, 2008.

BY THE COMMISSION:

Maurice Rodgerson, Chair

Brian J. McKenna, 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.