



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR08015
Order LR08-14**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Frances Joseph against
Order No. LD08-361, dated September 29,
2008.

BEFORE THE COMMISSION
on Thursday, the 23rd day of October, 2008.

Maurice Rodgerson, Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Frances Joseph against
Order No. LD08-361, dated September 29,
2008.

Order

On October 14, 2008, the Commission received a Notice of Appeal filed by the Appellant Frances Joseph (Ms. Joseph). Ms. Joseph appealed Order No. LD08-361 issued by the Office of the Director of Residential Rental Property (the Director) on September 29, 2008.

At issue is whether Ms. Joseph may appeal Order LD08-361 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 August 19, 2008 Notice of Hearing refers to an inspection of the residential premises and then continues with the following information:

Note: *Following the conclusion of this inspection, a hearing will be held at the residential premises located at 39B Pownal Street, Charlottetown PE for the purpose of (a) determining whether rent is owed, (b) an order that an amount found to be owed be paid, (c) termination of the rental agreement. A copy of the application is attached.*

According to the evidence on file, Tracey Joseph (Ms. Joseph's daughter and representative) arrived at the Director's office on August 28, 2008. Tracey Joseph was advised that the hearing was taking place at the residential premises. Tracey Joseph left the Director's office at approximately 2:05 p.m. The Director's Rental Officer advised that neither Ms. Joseph nor Tracey Joseph appeared and the hearing was held in their absence. The Rental Officer left the residential premises at approximately 2:40 p.m.

The Commission finds that Ms. Joseph was deemed to have received the August 19, 2008 Notice of Hearing on August 22, 2008, pursuant to subsection 33(3) of the **Act**. The Commission also finds that the Notice of Hearing clearly stated the date, time and location of the hearing. The Commission further finds that Ms. Joseph was not present at the hearing and was not represented at the hearing.

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 Ms. Joseph was neither present at the August 28, 2008 hearing before the Director nor represented at that hearing, subsection 25(1) of the **Act** does not provide her 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 LD08-361 issued by the Office of the Director of Residential Rental Property on September 29, 2008 remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 23rd day of October, 2008.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*
Maurice Rodgerson, Chair

(Sgd.) *John Broderick*
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.