



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR08-018  
Order LR08-17**

**IN THE MATTER** of an appeal, under section 25 of the Rental of Residential Property Act, by James Cahill against Order No. LD08-403, of the Director of Residential Rental Property, dated October 29, 2008.

**BEFORE THE COMMISSION**  
on Friday, the 28th day of November, 2008.

John Broderick, Commissioner  
David Holmes, Commissioner  
Gordon McCarville, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator

**IN THE MATTER** of an appeal, under section 25 of the Rental of Residential Property Act, by James Cahill against Order No. LD08-403, of the Director of Residential Rental Property, dated October 29, 2008.

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# Order

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On October 30, 2008, the Commission received a Notice of Appeal filed by the Appellant James Cahill (Mr. Cahill). Mr. Cahill appealed Order No. LD08-403 issued by the Office of the Director of Residential Rental Property (the Director) on October 29, 2008.

This appeal proceeded to a hearing before the Commission on November 24, 2008. Mr. Cahill represented himself at the hearing. Alexander MacKay (Mr. MacKay) represented the Respondents Joe and Gail Crossman.

At the outset of the hearing, the Commission identified a preliminary matter concerning the Commission's jurisdiction to hear the appeal. Specifically, the Commission noted that Mr. Cahill was served with a Form 4 Notice of Termination by Lessor of Rental Agreement (Form 4) on September 23, 2008. Mr. Cahill's Form 6 Application by Lessee to Set Aside Notice of Termination (Form 6) was not filed until October 7, 2008, the 14<sup>th</sup> day following service of the Form 4.

Section 16 of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1(the **Act**) reads as follows:

*16. (1) A lessee who has received notice of termination for any of the reasons set out in section 13, 14 or 15 may apply to the Director for an order setting aside the notice.*

*(2) An application under subsection (1) shall be made by a lessee not later than ten days after being served with the notice.*

*(3) Where the lessee does not bring an application to set aside the notice, he shall be deemed to have accepted the termination on the effective date of the notice.*

*(4) The lessee shall serve the lessor with a copy of an application of the lessee under subsection (1). 1988,c.58,s.16; 1990,c.53,s.6.*

Emphasis added.

The Commission invited submissions from the parties concerning the preliminary matter.

Mr. Cahill told the Commission that he thought that he had 30 days to file the Form 6. Mr. MacKay told the Commission that he gave the Form 4 to Mr.

Cahill on September 23, 2008 but Mr. Cahill refused to accept the document. Mr. MacKay then placed the Form 4 in Mr. Cahill's mailbox.

The Commission finds that as Mr. Cahill did not file the Form 6 until the 14<sup>th</sup> day following service of the Form 4, he is deemed under subsection 16(3) of the **Act** to have accepted the termination on the effective date of the Form 4 notice of termination.

Accordingly, the Commission does not have the jurisdiction to hear this appeal.

As a result, Order LD08-403 remains in full force and effect.

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**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*:

**IT IS ORDERED THAT**

1. The Commission does not have the jurisdiction to hear this appeal.
2. Order LD08-403 issued by the Office of the Director of Residential Rental Property on October 29, 2008 remains in full force and effect.

**DATED** at Charlottetown, Prince Edward Island, this 28th day of November, 2008.

**BY THE COMMISSION:**

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John Broderick, Commissioner

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David Holmes, Commissioner

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Gordon McCarville, 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.*

IRAC141y-SFN(2008/10)