



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR09027
Order LR09-25**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, by Lloyd Joseph against Order
No. LD09-316, of the Director of Residential
Rental Property, dated October 16, 2009.

BEFORE THE COMMISSION
on Friday, the 13th day of November, 2009.

Allan Rankin, Vice-Chair
John Broderick, Commissioner
Gordon McCarville, Commissioner

Order

IN THE MATTER of an appeal, under
**Section 25 of the Rental of Residential
Property Act, by Lloyd Joseph against Order
No. LD09-316, of the Director of Residential
Rental Property, dated October 16, 2009.**

Order

Introduction

On October 19, 2009, the Commission received a Notice of Appeal filed by Lloyd Joseph (Mr. Joseph). Mr. Joseph appealed Order No. LD09-316 issued by the Office of the Director of Residential Rental Property (the Director) on October 16, 2009.

By way of background, Hensley Green Cooperative (the Respondent) filed with the Director a Form 4 Notice of Termination by Lessor of Rental Agreement dated September 8, 2009 and a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated October 5, 2009.

In Order LD09-316, the Director ordered that:

“Possession of the residential premises is to be surrendered to the lessor and the sheriff is directed to put the lessor in possession of the residential premises at 12:00 p.m., Wednesday, October 21, 2009.”

This appeal proceeded to a hearing before the Commission on October 23, 2009. Mr. Joseph was present at the hearing. Marla Affleck (Ms. Affleck) represented the Respondent at the hearing.

Evidence

Mr. Joseph testified that he had received several notices of termination from the Respondent. He told the Commission that he was informed by an employee of the Respondent that if he kept paying down his rent arrears that he could stay. He made payments in July and August 2009. He stated that he would have started looking for new residential premises if he had known that the Respondent was “going to put me out”. He was then put off work by his doctor and began receiving EI sick benefits. He stated that he does not have the money to pay his rent now and he needs more time. He noted that there are five people in the household: himself, his wife, his two daughters and his baby grandson.

Ms. Affleck submitted that Mr. Joseph did not pay the full damage deposit in October 2007 when he first moved in to the residential premises. He was paying extra on the outstanding balance of the damage deposit. He was almost continuously in arrears. He then started to fall further and further behind. Ms. Affleck noted that the Respondent is paying the water, sewer and

the heat for the residential premises. The sole income for the Respondent is rental income.

Decision

The Commission hereby denies the appeal for the reasons that follow.

Mr. Joseph has not demonstrated that the Director made any error in Order LD09-316. Mr. Joseph acknowledges that he owes the Respondent rent.

The Commission finds that Mr. Joseph did not pay the outstanding rent within ten days of having received the Form 4 Notice of Termination by Lessor of Rental Agreement dated September 8, 2009. Accordingly, the Respondent is entitled to a termination of the rental agreement.

The Commission hereby affirms the provisions of Order LD09-316 subject to a revision of the date of possession. The Commission hereby orders that possession of the residential premises be surrendered to the Respondent and the sheriff is directed to put the Respondent in possession of the residential premises at 12:00 p.m. (noon) on Friday, November 20, 2009.

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 denied.**
2. **Possession of the residential premises shall be surrendered to the Respondent Hensley Green Cooperative and the sheriff is hereby directed to put the Respondent and its agent Atlantic Peoples Housing in possession of 97 Hillsboro Street, Charlottetown, Prince Edward Island, at 12:00 p.m. (noon) on Friday, November 20, 2009.**

DATED at Charlottetown, Prince Edward Island, this 13th day of November, 2009.

BY THE COMMISSION:

Allan Rankin, Vice-Chair

John Broderick, Commissioner

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)

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)