



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR10001  
Order LR10-02**

**IN THE MATTER** of an appeal, under  
Section 25 of the Rental of Residential  
Property Act, by James Feehan against  
Order No. LD09-409 of the Director of  
Residential Rental Property dated January 6,  
2010.

**BEFORE THE COMMISSION**  
on Thursday, the 14th day of January, 2010.

Allan Rankin, Vice-Chair  
John Broderick, Commissioner  
David Holmes, 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 James Feehan against  
Order No. LD09-409 of the Director of  
Residential Rental Property dated January 6,  
2010.**

---

# Order

---

On January 6, 2010, the Commission received a Notice of Appeal filed by the Appellant, James Feehan (Mr. Feehan). Mr. Feehan appealed Order No. LD09-409 issued by the Office of the Director of Residential Rental Property (the Director) on December 29, 2009.

This matter concerns residential premises situate at 71 Kensington Road, Apartment #15, Charlottetown, Prince Edward Island, said premises owned by the Respondents, Ken and Evelyn Jenkins (the Respondents).

By way of background, in Order LD09-409 the Director found:

“The Notice of Termination by Lessor of Rental Agreement (Form 4) dated December 16, 2009 to be effective January 5, 2010 issued to James Feehan is valid.

The rental agreement between the lessee and the lessor is terminated effective January 5, 2010.”

The appeal proceeded to a hearing on January 13, 2010. Mr. Feehan represented himself. Catherine Parkman represented the Respondents.

---

## EVIDENCE

Mr. Feehan submitted that he had paid rent for the months of December 2009 and January 2010. He told the Commission that he did not attend the December 29, 2009 hearing before the Director as he believed that, by paying the outstanding rent noted in the December 16, 2009 Form 4 on December 19, 2009, the Form 4 was no longer valid. Attached to his Notice of Appeal were receipts to support his claim.

Counsel for the Respondents submitted documentary evidence and oral testimony from Evelyn Jenkins with respect to the authenticity of the copies of receipts attached to Mr. Feehan's Notice of Appeal. Counsel submitted that Evelyn Jenkins never issued receipts to Mr. Feehan for December 2009 and January 2010 because she never received rent payments from him for those months. Counsel submits that the Commission has no jurisdiction to hear this appeal as Mr. Feehan was not present at the hearing before the Director.

## DECISION

The Commission finds that it has no jurisdiction to proceed further with this appeal.

Subsection 25(1) of the **Rental of Residential Property Act** R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**) reads 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)*

Mr. Feehan states the following reasons for appeal in his January 6, 2010 Notice of Appeal:

*I paid my rent for both Dec & Jan on Dec 19, 2009 so I was under the assumption the eviction notice was voided. I was not at the hearing because I was away and with the rent being paid in the 10 days I believed the notice was voided.*

The Commission notes the mandatory nature of section 9 of the **Interpretation Act**:

*9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*

The Commission is of the view that it would be absurd to deny a would-be appellant an appeal if they did not attend a hearing, or send a representative on their behalf, for reasons entirely beyond their control. As an example, if a landlord provided the Director with a false address for the tenant and thus the tenant legitimately never received a notice of hearing and had no way of knowing the actual date, time and location of the hearing, it would bring the administration of justice into disrepute for the Commission, knowing the mandatory nature of section 9 of the **Interpretation Act**, to apply the strict letter of the law contained in subsection 25(1) of the **Act** and deny that would-be appellant a hearing.

The Commission would expect clear, compelling and objective evidence before applying section 9 of the **Interpretation Act** to temper subsection 25(1) of the **Act**.

*Prima facie* [on first appearance] it appeared from Mr. Feehan's Notice of Appeal and attached photocopies of receipts that there might be sufficient factual circumstances to invoke section 9 of the **Interpretation Act** in order to temper the otherwise "black letter law" of subsection 25(1) of the **Act**. It was on such a basis that the Commission scheduled a hearing in order to hear evidence from both parties.

Having heard evidence from the parties, the Commission has serious doubts as to the veracity of the "receipts" proffered by Mr. Feehan. Accordingly, the Commission gives no evidentiary weight to the photocopied "receipts" Mr. Feehan attached to his Notice of Appeal. Based on the totality of credible evidence presented at the hearing, the Commission is satisfied that the Respondents in fact never received rent from Mr. Feehan for December 2009 or January 2010. Accordingly, the Commission finds that Mr. Feehan could not have had an honest belief that he voided the December 16, 2009 Form 4. The Commission therefore finds that he could not have assumed that he did not have to attend the December 29, 2009 hearing before the Director.

Accordingly, the Commission finds that the strict application of subsection 25(1) of the **Act** in this matter would not violate the requirements of section 9 of the **Interpretation Act**. As Mr. Feehan neither attended the December 29, 2009 hearing, nor was represented at said hearing, the Commission hereby denies this appeal.

**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 has no jurisdiction to hear this appeal.**
2. **Order LD09-409 remains in full force and effect and therefore the rental agreement between the parties was lawfully terminated on January 5, 2010.**

**DATED** at Charlottetown, Prince Edward Island, this 14th day of January, 2010.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Allan Rankin*  
Allan Rankin, Vice-Chair

\_\_\_\_\_  
(Sgd.) *John Broderick*  
John Broderick, Commissioner

\_\_\_\_\_  
(Sgd.) *David Holmes*  
David Holmes, 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.*

**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.

IRAC141y-SFN(2009/11)