



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR12012
Order LR12-14**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Cindy Roias against Order
LD12-139 dated June 1, 2012 issued by the
Director of Residential Rental Property

BEFORE THE COMMISSION
on Friday, the 8th day of June, 2012.

John Broderick, Commissioner
Ferne MacPhail, Commissioner
Jean Tingley, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Cindy Roias against Order
LD12-139 dated June 1, 2012 issued by the
Director of Residential Rental Property

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BACKGROUND

On June 4, 2012 the Commission received a Notice of Appeal dated the same date from Cindy Roias (the Appellant) requesting an appeal of Order LD12-139 dated June 1, 2012 said Order issued by the Director of Residential Rental Property (the Director).

By way of background, on May 24, 2012 Brian Andrews, on behalf of Andrews Properties Inc. (the Respondent) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated May 24, 2012 to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated May 2, 2012.

The matter was heard by the Director on June 1, 2012. In Order LD12-139 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. Possession of the residential premises be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 12:00 noon, Tuesday, June 5 2012.”*

The appeal was heard by the Commission on June 8, 2012. The Appellant was present and Stephanie Andrews represented the Respondent.

EVIDENCE

The Appellant explained that she is able to pay one month’s rent now which represents a portion of the total outstanding rent. She indicated that she believes that her employment prospects have improved and that she will be able to catch up on her rent and avoid falling into arrears in the future.

The Respondent explained that there has been a history of arrears and a history of efforts to catch up. However, while the Respondent would like to help, the matter has been decided by the Director.

Decision

The ***Rental of Residential Property Act*** (the **Act**) does allow a Form 4 Notice of Termination to be set aside, but only pursuant to the process of section 16 which reads:

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.

In the present appeal, the Appellant did not file an application to set aside the Notice of Termination and therefore she is deemed to have accepted the termination on the effective date of the Notice. The Form 4 does inform the parties that the lessee may apply to terminate the Notice of Termination pursuant to section 16 of the **Act**. Neither the Director nor the Commission has been granted equitable jurisdiction to mitigate the clear direction of the statute. The Director and the Commission are both creatures of statute and therefore must comply with the requirements of the **Act**.

Accordingly, the Commission upholds the Director's Order in its entirety.

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. Order LD12-139 is hereby upheld in its entirety.

DATED at Charlottetown, Prince Edward Island, this 8th day of June, 2012.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Ferne MacPhail)

Ferne MacPhail, Commissioner

(sgd. Jean Tingley)

Jean Tingley, 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)