



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR13018  
Order LR13-16**

**IN THE MATTER** of an appeal under  
Section 25 of the Rental of Residential  
Property Act, by Ben Godkin against Order  
LD13-282 dated September 18, 2013 issued  
by the Director of Residential Rental  
Property

**BEFORE THE COMMISSION**  
on Friday, the 20th day of September, 2013.

Maurice Rodgerson, Chair  
John Broderick, Acting Vice-Chair

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# Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

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Commission Administrator  
Land, Corporate and Appellate Services Division

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On September 19, 2013 the Commission received a Notice of Appeal dated the same date from a lessee, Ben Godkin (the Appellant) requesting an appeal of Order LD13-282 dated September 18, 2013 issued by the Director of Residential Rental Property (the Director).

The matter was initially heard by the Director on September 18, 2013. In Order LD13-282 it states, in part:

*“AND WHEREAS a Notice of Hearing dated September 11 2013 was sent to the lessor and the lessee advising them of a hearing scheduled for September 18, 2013 regarding the lessor’s application...”*

*AND WHEREAS a hearing was held on this matter on September 18, 2013 pursuant to Section 4.(2)(d) of the Act. The lessor was represented by Lori Loggie, who was accompanied by Colin Sillers. The lessee did not attend the hearing nor did he contact the Officer concerning his intentions. The hearing proceeded in the absence of the lessee.”*

Subsections 25(1), 25(3) and 33(3) of the **Rental of Residential Property Act** R.S.P.E.I. 1988, Cap. R-13.1 (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.*

(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.*

**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.*

Emphasis added.

The Commission has disallowed the Appellant’s Notice of Appeal as the Appellant did not appear or have a representative at the hearing before the Director. The Commission does not have the authority to waive a requirement of the **Act**.

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

**IT IS ORDERED THAT**

1. The September 18, 2013 Notice of Appeal filed by Ben Godkin is hereby disallowed.
2. Order LD13-282 issued by the Director remains in full force and effect.
3. Possession of the rental premises located at 2A MacIntyre Drive, Charlottetown, PE are to be surrendered to the lessor, G. Stewart MacKay Real Estate, and the Sheriff is directed to put the lessor in possession of the residential premises forthwith.

**DATED** at Charlottetown, Prince Edward Island, this 20th day of September, 2013.

**BY THE COMMISSION:**

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(sgd. Maurice Rodgerson)  
Maurice Rodgerson, Chair

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(sgd. John Broderick)  
John Broderick, Acting Vice-Chair

**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)