



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR14033
Order LR14-29**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Donna Creed and David
Trainor against Order LD14-331 dated
October 9, 2014 issued by the Director of
Residential Rental Property

BEFORE THE COMMISSION
on Friday, the 17th day of October, 2014.

J. Scott MacKenzie, Q.C., Chair
Douglas Clow, Vice-Chair

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under
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On October 16, 2014 the Commission received a Notice of Appeal dated the same date from two lessees, Donna Creed and David Trainor (the “Appellants”) requesting an appeal of an Order LD14-331 dated October 9, 2014 issued by the Director of Residential Rental Property (the “Director”) allowing an application of K.E.M. Holdings Inc. (the “lessor”), pursuant to Section 6.(10) of the **Rental of Residential Property Act, R.S.P.E.I. 1988, Cap. R-13.1, as amended** (the “Act”), requesting an order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession .

The matter was heard by the Director on October 7, 2014. In Order LD14-331 it states, in part:

*“**WHEREAS** the lessor made an ex parte application on October 3, 2014 pursuant to Section 6.(10) of the **Rental of Residential Property Act, R.S.P.E.I. 1988, Cap. R-13.1, as amended**, requesting an order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession. Included with the application was the following:*

- a copy of **Order LD14-033** dated February 5, 2014 issued by John L. Keizer, Rental Property Officer.

***AND WHEREAS** a hearing was held on this matter on October 7, 2014 pursuant to Section 4.(2)(d) of the **Act**. The lessor was represented by Linda Menzie who gave her evidence via telephone. The lessees were not given notice of the hearing and did not appear.*

***AND WHEREAS** the evidence and submissions of the lessor's representative may be summarized as follows:*

*The lessor had applied on January 20, 2014 for an Order of possession for the residential premises based on a Notice of Termination by Lessor of the Rental Agreement (Form 4) dated November 21, 2013 for effect on December 10, 2013. At that time, the parties entered into an agreement which was incorporated into **Order LD14-033**.”*

Order LD14-033 contained provisions setting out an agreement between the Appellants and the lessor providing for a set schedule of payments to be made to repay agreed rental arrears owed and to make ongoing rent payments. The agreement which was incorporated into Order 14-033 of the Director stated in part:

“IT IS THEREFORE ORDERED THAT

...

3. *If the lessee makes all of the payments set out in paragraph 1, then the rental agreement between the parties shall continue to be in effect.*

4. ***If the lessee defaults on any payment set out in paragraph 1 at any time, then the rental agreement between the lessor and the lessee for the residential premises shall terminate as of 12:00 noon on the second day after the default in payment. The lessee must vacate the residential premises on or before 12:00 noon of that second day.***

5. *If the lessee fails to vacate the residential premises in accordance with paragraph 4 of this order, **then the lessor may apply without further notice to the lessee for an order directing the sheriff to put the lessor in possession of the rental premises.**” (emphasis added)”*

In Order LD14-331, that is subject to this application for appeal, the Director noted that the lessor provided evidence that the above noted agreement had been breached by nonpayment of rent and that the Appellants were in default. The Director further noted that the remedy for such default, as agreed between the Appellants and the lessor and incorporated into Order LD14-033, was that the rental agreement shall terminate at 12 noon on the second day after default and that the lessor may apply without further notice to the Appellants for an order for possession. That is what the lessor has done and the Director granted the order for possession in Order LD 14-331.

Subsections 25(1), 25(3) and 33(3) of 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. 4/910.*

The Appellant’s Notice of Appeal of Order LD14-331 issued October 9, 2014 is disallowed. The Appellants made an agreement with the lessor to make repayment of rental arrears and to make regular rental payments in accordance with an agreed schedule of payments at the hearing before the Director on February 3, 2014. The Appellants also agreed to the remedies of termination and possession that would be available to the lessor, without further notice to them, if they defaulted. That agreement was incorporated in the Order LD14-033 issued by the Director on February 5, 2014. The Appellants did not appeal that Order LD14-033 pursuant to subsection 25(1) of the Act. Therefore, pursuant to

subsection 25(3) of the **Act**, the Appellants are deemed to have accepted the decision of the Director in LD14-033 and the decision is final.

The application for possession by the lessor and the Order LD14-331 granted October 9, 2014 flow from the remedies that the Appellants and the lessor agreed to in the February 3, 2014 hearing and that form part of Order LD14-033. In these circumstances the Commission finds that there can be no appeal of Order LD14-331, as the present application for appeal concerns matters, findings, and remedies that were agreed to by the Appellants and incorporated into an order of the Director that was issued more than eight (8) months ago.

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

IT IS ORDERED THAT

1. **The October 16, 2014 Notice of Appeal filed by Donna Creed and David Trainor is hereby disallowed.**
2. **Therefore, Order LD14-331 issued by the Director remains in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this **17th** day of **October**, **2014**.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C., Chair

(sgd. Douglas Clow)

Douglas Clow, 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)