



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR15026
Order LR15-21**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, filed by Lincoln McCardle
against Order LD15-295 of the Director of
Residential Rental Property dated August 12,
2015

BEFORE THE COMMISSION
on Friday, the 14th day of August, 2015.

Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan D. Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, filed by Lincoln McCardle against Order LD15-295 of the Director of Residential Rental Property dated August 12, 2015

Order

On August 13, 2015, the Commission received a Notice of Appeal from a lessee, Lincoln McCardle (the “Appellant”), requesting an appeal of Order LD15-295 dated August 12, 2015.

Order LD15-295 issued by the Director of Residential Rental Property (the “Director”) states, in part:

“IT IS THEREFORE ORDERED THAT

1. ***The Notice of Termination by Lessor [Trent Cousins] of Rental Agreement (Form 4) dated July 29, 2015 to be effective August 29, 2015 is valid.***
2. ***The lessor’s application for earlier termination is approved and the rental agreement between the parties shall terminate on Friday, August 14, 2015 at 12:00 noon.***
3. ***The lessee [Lincoln McCardle] and any other occupants shall vacate the rental premises by Friday, August 14, 2015 at 12:00 noon.***
4. ***If the lessee does not vacate the premises in accordance with Paragraph 3 of this Order, then the lessor shall be at liberty to apply without further notice to the lessee for an Order directing the Sheriff to put the lessor in possession of the rental premises.”***

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 was not present 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 August 13, 2015 Notice of Appeal filed by Lincoln McCardle, is hereby disallowed.
2. Order LD15-295 issued by the Director remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 14th day of **August**, 2015.

BY THE COMMISSION:

(sgd. Douglas Clow)
Douglas Clow, Vice-Chair

(sgd. John Broderick)
John Broderick, 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.