



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16003
Order LR16-03**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, filed by Allan Sparks against
Order LD16-028 issued by the Director of
Residential Rental Property dated February
2, 2016.

BEFORE THE COMMISSION
on Wednesday, the 17th day of February,
2016.

John Broderick, Commissioner
Douglas Clow, Vice-Chair
Ferne MacPhail, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Dawn Murphy

Appeals Coordinator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, filed by Allan Sparks against Order LD16-028 issued by the Director of Residential Rental Property dated February 2, 2016.

Order

BACKGROUND

On February 5, 2016 the Commission received a Notice of Appeal from a lessee, Allan Sparks (the “Appellant”), requesting an appeal of Order LD16-028 dated February 2, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on November 12, 2015 the Appellant filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination together with two Notices of Termination by Lessor of Rental Agreement each dated November 2, 2015 signed by the representative of a lessor, Weymouth Properties Ltd. (the “Respondent”).

The matter was heard by the Director on December 22, 2015 and in Order LD16-028 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The Notice of Termination by Lessor of Rental Agreement (Form 4) dated November 2, 2015 to be effective December 2, 2015 is valid.*
- 2. The rental agreement between the parties is terminated and the lessee shall vacate the rental premises by 1:00 PM on Friday, February 5, 2016.*
- 3. If the lessee does not vacate the premises in accordance with Paragraph 2 of this Order, then the lessor shall be at liberty to apply for an order directing the Sheriff to put the lessor in possession of the rental premises without further notice to the lessee.”*

The matter was initially scheduled to be heard by the Commission on February 11, 2016. As the Appellant was not present, the Commission adjourned the hearing until February 16, 2016.

The Commission proceeded to hear the appeal at the February 16, 2016 hearing. The Appellant was not present. The Respondent was represented by Betty Morrison and Wayne Bevan.

EVIDENCE

Catherine Flanagan, the Director, testified before the Commission as to the circumstances pertaining to the Appellant's absence. The Commission finds that the Appellant was unable to be present for a valid reason beyond his control.

Betty Morrison and Wayne Bevan testified as to the merits of the matter and also acknowledged that the Form 4 in question was inadvertently unsigned.

DECISION

The Commission allows the appeal, determines that the unsigned November 2, 2015 Form 4 is not valid and reverses Director's Order LD16-028 for the reasons that follow.

A Form 4 Notice of Termination by Lessor of Rental Agreement is an important legal document which, subject to the terms and provision contained in the Form 4 and in the Rental *of Residential Property Act*, may authorize the lessor to terminate the rental agreement and thus evict a lessee. In order to be valid, a Form 4 must be signed. In the present appeal, the applicable Form 4 was inadvertently left unsigned, the Form 4 is thus invalid and the Director's Order must be reversed as a result of this error.

The Commission wishes to make clear that its decision is founded on a procedural error with respect to the applicable Form 4. The Commission's decision thus does not constitute a ruling on the merits of this matter.

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 allowed and Director's Order LD16-028 is hereby reversed.**

DATED at Charlottetown, Prince Edward Island, this **17th** day of **February**, **2016**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

(sgd. Ferne MacPhail)

Ferne MacPhail, 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)