



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16006
Order LR16-05**

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act, filed by Tanya Burke against Order LD16-040 issued by the Director of Residential Rental Property dated February 17, 2016.

BEFORE THE COMMISSION

on Tuesday, the 23rd day of February, 2016.

John Broderick, Commissioner
Peter McCloskey, Commissioner
Jean Tingley, 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 Tanya Burke against Order LD16-040 issued by the Director of Residential Rental Property dated February 17, 2016.

Order

Background

On February 17, 2016 the Commission received a Notice of Appeal from a lessee, Tanya Burke (the "Appellant"), requesting an appeal of Order LD16-040 dated February 17, 2016 issued by the Director of Residential Rental Property (the "Director").

By way of background, on February 1, 2016 a lessor, Adam Affleck (the "Respondent"), filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement. A copy of a Form 4 - Notice of Termination by Lessor of Rental Agreement dated January 4, 2016 was attached to the Application.

The matter was heard by the Director on February 10, 2016 and in Order LD16-040 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, Thursday, February 18, 2016."

The matter was heard by the Commission on February 22, 2016. The Appellant was present and represented herself. The Respondent participated via telephone.

Evidence

The Appellant testified that she had paid \$400.00 towards the outstanding rent of \$900.00 on January 6, 2016. She stated that she did not obtain a receipt for this payment. She testified that the Respondent sometimes did not issue receipts for rent payments she made. She also stated that the Respondent informed her that he would call it "square" and the January 4, 2016 Form 4 would be null and void.

The Respondent testified that he did not receive a payment of \$400.00 in January 2016 and he did not inform the Appellant that the Form 4 would be null and void. The Respondent also testified that he always issues receipts.

Both parties testified at length as to matters which were not dealt with in Director's Order LD16-040. These matters were dealt with in another Director's Order, LD16-041; however, Order LD16-041 has not been appealed to the Commission.

Decision

The Commission denies the appeal for the reasons that follow.

The Appellant claims that she made a \$400.00 payment on or about January 6, 2016; however, she had no receipt or paper trail to establish that such payment had actually been made. She attempted to explain the absence of a receipt by testifying that the Respondent sometimes accepted payment without issuing a receipt. The record before the Commission is at odds with her testimony on that point; the tenancy commenced in August 2015 and Exhibit E-10 contains copies of receipts issued from August to December 2015 inclusive, thus demonstrating a five-month pattern of the Respondent issuing receipts to the Appellant.

The Commission finds that the Appellant did not pay the arrears of rent within ten days of receiving the Form 4.

The evidence further demonstrates that the Appellant did not apply to the Director to set aside the Form 4 Notice of Termination by Lessor of Rental Agreement. Section 16 of the **Rental of Residential Property Act**, R.S.P.E.I. 1988, Cap. R-13.1 (the **Act**) reads as follows:

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.

Pursuant to subsection 16(3), the Appellant is deemed to have accepted the termination as she did not file a Form 6 Application by Lessee to Set Aside Notice of Termination with the Director.

For the above reasons, the Commission finds that the Director was correct in issuing Order ID16-040.

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. Possession of the residential premises, described as Apartment 3, 20 Longworth Avenue, Charlottetown PE, be surrendered to the Respondent lessor and the Sheriff is directed to put the Respondent lessor in possession of said residential premises at 12:00 noon, Thursday, February 25, 2016.

DATED at Charlottetown, Prince Edward Island, this **23rd** day of **February**, 2016.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Peter McCloskey)

Peter McCloskey, 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)