



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR15038 and
LR15039
Order LR16-07**

IN THE MATTER of an appeal, under
Section 25 of the Rental of Residential
Property Act, filed by Wayne Richards
against Order LD15-376 dated October 23,
2015 and Order LD15-383 dated October 29,
2015 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION

on Thursday, the 10th day of March, 2016.

J. Scott MacKenzie, Q.C. Chair
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 Wayne Richards against Order LD15-376 dated October 23, 2015 and Order LD15-383 dated October 29, 2015 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On November 12, 2015 the Commission received a Notice of Appeal signed by a lessor, Wayne Richards (the “Lessor”) and his representative, Randy Pitre (“Mr. Pitre”), respecting Order LD15-376 dated October 23, 2015 and Order LD15-383 dated October 29, 2015. Both Orders were issued by the Office of the Director of Residential Rental Property (the “Director”).

ORDER LD15-376

Order LD15-376 related to two (2) Form 4’s - Notice of Termination by Lessor of Rental Agreement directed to two lessees, “Kerry” “Allan” “Mark” Bjdoron (sic) and Ted Bjjordon (sic) respecting leased premises located at 19 Young Street, Apartment #2, Charlottetown, PE. The Lessor contended that the lessees conducted themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of the other lessees.

A hearing on this Notice of Termination was held by the Director on September 29, 2015. Both the Lessor and the Lessees gave evidence.

At the hearing, the Lessor objected to the hearing going ahead, as the Lessees had not themselves served the Lessor with the Form 6 Application by Lessee to Set Aside Notice of Termination as required by section 16(4) of the *Rental of Residential Property Act* (PEI) (the “**Act**”).

The decision of the Director noted that the Form 6 had been served on the Lessor as an attachment to the Notice of Hearing, which the Lessor had received, although the Form 6 sent with the Notice of Hearing did not have attached the Form 4 Notice of Termination. The Director decided that there was no prejudice to the Lessor by reason of the failure of the Lessees, themselves, to serve Form 6 as required under the **Act**. However, the Director nevertheless decided in favour of the Lessor, and ordered that the Notice of Termination by the Lessor was valid and effective as of October 15, 2015.

ORDER LD15-383

Order LD15-383 related to a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement made by one of the Lessees, Kerry Allan Bjorndal, respecting leased premises located at 19 Young Street, Apartment #2, Charlottetown, PE and being the same leased premises referred to in Order LD15-376. A Form 7 Inspection Order was signed by the Director of Residential Rental Property on September 21, 2015 requiring the premises be made available for inspection on September 29, 2015.

An inspection was held at the premises on September 29, 2015 and the Director on October 29, 2015 issued Order LD15-383.

GROUND OF APPEAL

In their Notice of Appeal dated November 13, 2015, the Lessor and Mr. Pitre gave the following reasons for this appeal:

“Staff are “knowingly and purposely” not following procedures under the Rental of Residential Property Act. Hearings went ahead in this matter “without” lessor being served. Staff informed lessees they were “not required” to serve lessor. “2” Orders issued out in same hearing @ different dates, 23rd, & 28th Once a “formal order” been issued, adjudicator cannot re-open the matter or issue, 2nd Order.”

THE PRELIMINARY HEARING

Pursuant to Rule 30.0 of the Rules of Practice and Procedures for Hearings before the Island Regulatory and Appeals Commission, the Commission gave Notice of Preliminary Hearing for the purpose of dealing with the specific issues of:

“a) the Appellant’s concerns regarding the procedures under the Rental of Residential Property Act for service of documents by interested parties; and

b) the Appellant’s assertion in his appeal of Orders LD15-376 and LD15-383 that the Rental Officer issued a second order on the matter.”

The Preliminary Hearing was held on December 10, 2015 in the Commission’s Hearing Room. Mr Pitre was present and answered a number of questions posed by counsel for the Commission as well as by the Chair and members of the Commission. Mr. Pitre also presented his arguments on the Appeal. No one appeared on behalf of the Lessees, although they were duly served with the Notice of the Preliminary Hearing. Accordingly, with the approval of Mr. Pitre, the Commission determined that the hearing on December 10, 2015 would serve as the final hearing on the Appeal, and the Commission took the matter under advisement.

EVIDENCE

On the hearing of the Appeal, Mr. Pitre was asked what the Lessor was asking the Commission to do given that the tenancy had been terminated and the Lessees had vacated the premises. Mr. Pitre advised that his principal concern was that the Director and the Lessees were not following proper procedures and this has led, and would continue to lead, to confusion on the part of everyone.

Mr. Pitre testified that he had not at the time of entering into the rental agreement provided written notice to the Lessees of the name and address of the Lessor or the name and telephone number of the person responsible for the leased premises as provided in section 31(1) of the **Act**.

Mr. Pitre stated that he had given this information to the Lessees, but not in the manner required by the **Act**.

Following the hearing on December 10, 2015, Mr. Pitre filed further written submissions as well as case authorities in support of the Appeal.

DECISION

The Commission hereby denies this Appeal on the basis that the matters in issue are moot, and there is no issue left to resolve between the Lessor and the Lessees.

The doctrine of mootness was described by the Supreme Court of Canada in *Borowski v. Canada (Attorney General)* [1989] S.C.J. No. 14 as follows:

“ . . . The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applied when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceedings, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot . . . ”

The Commission finds that as the Lessees have vacated the premises, as requested by the Lessor, a further decision by the Commission will not have any practical effect on the rights of the Lessor and the Lessees.

DIRECTIONS

While the Commission has determined that the Appeal is moot, it will take this opportunity to address the concerns with respect to the procedures followed that were raised the by Mr. Pitre.

Section 16 of the **Act** reads as follows:

“(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).”

Mr. Pitre asserts that even though he had received the Form 6 with the Notice of Hearing, albeit without the Form 4 attached, nevertheless this was not strict compliance with section 16(4), and the hearing before the Director should not have proceeded.

Section 31 of the **Act** reads as follows:

“31. (1) The lessor shall at the time of entering into the rental agreement provide the lessee with the following information in writing:

(a) the name and address of the lessor;

(b) the name and telephone number of the person responsible for the premises.

2) Where the lessor rents more than one residential premises in the same building and retains possession of part for the use of all lessees in common, the lessor shall post and maintain posted in the common area a notice giving the information required by subsection (1). 1988,c.58,s.31.”

Mr. Pitre acknowledged before the Commission that he did not strictly comply with section 31.(1) and (2).

This same issue came up in an earlier appeal by the same Lessor in the matter of an Appeal under section 25 of the **Act** filed by Wayne Richards (represented by Randy Pitre) in Order LD15-336. In that case the Lessee testified that he had, in fact, served the Lessor with Form 6, but the Lessor denied that. Mr. Pitre did acknowledge in that case that he had received a copy of the Form 6 prior to the hearing, although not from the Lessee. In that case, the Commission decided that the hearing should proceed. In doing so, they stated as follows:

“As the purpose of the Form 6 is to provide a lessor with timely notice that a lessee is challenging the lessor’s Form 4 and Mr. Pitre had received a copy of the Form 6 prior to the hearing of the matter by the Director, the Commission finds that there has been no prejudice or compromise of the Appellant’s position.”

In doing so, the Commission referred to an earlier decision by the Commission in Commission Order LA99-06. That case involved a provision in the *Planning Act* which required the appellant to serve a copy of the Notice of Appeal on the Minister. The Commission ruled against the objection that failure to serve the Notice of Appeal was fatal, and in doing so he stated:

“Service of Notice upon Minister

In Exhibit D3, the Developer raises an argument that the Appellant has failed to comply with the provisions of subsection 28(6) of the [Planning] Act, in that the Appellant failed to serve the Minister with a copy of the Notice of Appeal. There is no doubt that subsection 28(6) of the [Planning] Act requires a copy of the Notice of Appeal to be served upon the Respondent within seven days of filing an appeal with the Commission. However, the statute does not go on to provide that failure to do so brings an end to the appeal.

Section 9 of the *Interpretation Act*, R.S.P.E.I. 1988, Cap. I-8 states:

Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

What is the purpose of subsection 28(6)? Surely, it is there to make sure that the Minister, in this case, is notified in a timely fashion that the Appellant has launched an appeal with the Commission. The facts of the present case disclose that the Respondent has not been prejudiced in any way as a result of apparent non-compliance with subsection 28(6). In fact, it is the Developer who has raised this objection, and taken the lead, not the Respondent.

Regardless of whether the letter to the Minister dated June 2, 1999 (Exhibit A3) satisfies the provisions of subsection 28(6) of the [Planning] Act, it would appear to the Commission that the Minister had knowledge of the Notice of Appeal and in fact it appears obvious that he had received a copy of the Notice of Appeal which was filed with the Commission as he was able to submit a letter to the Commission raising a number of issues with respect to the Appellant’s grounds for appeal on August 24, 1999 (Exhibit R17). Furthermore, the Appellant in his submission of October 15, 1999, states that a copy of the Notice of Appeal was served on the Minister.

*After full consideration of all the submissions of the parties; and after reviewing the facts of this case in light of Section 28 in its entirety against the backdrop of Section 9 of the **Interpretation Act**, supra; it is the Commission’s considered opinion that there has been no prejudice or compromise of the Respondent’s position. Therefore, this argument fails and the appeal will proceed.”*

The Commission hearing this Appeal agrees with those earlier rulings.

The Commission expects that all lessors and lessees will make all reasonable efforts to comply with Sections 16 and 31 of the Act. This will, as stated by Mr. Pitre, help to avoid confusion down the road.

Regarding the concern raised by Mr. Pitre over the issuance of two separate decisions, the Commission notes that while the facts overlapped, the two decisions arose out of two separate and distinct processes, and thus it was proper for the Director to issue two separate decisions and Orders.

Order LD15-376 under Docket 15-400 dealt with a Form 4 Notice of Termination by the Lessor of Rental Agreement and the Form 6 Application by Lessee to Set Aside Notice of Termination.

The Form 4 Notice of Termination by the Lessor of Rental Agreement was given pursuant to section 15 of the **Act**. The Application to Set Aside Notice of Termination was given pursuant to section 16 of the **Act**. Having received both, the Director of Residential Rental Property gave Notice of Hearing dated September 21, 2015, and a hearing on that matter was held at the office of the Director on September 29, 2015.

Order LD15-383 under Docket 15-401 dealt with a Form 2 Application for Enforcement of Statutory or Other Conditions of Rental Agreement dated September 16, 2015 made by the Lessee, Kerry Alan Bjorndal.

The Application for Enforcement of Statutory or Other Conditions of Rental Agreement was made pursuant to section 8 of the **Act**. Having received the Application, the Director issued a Form 7 Inspection Order for September 29, 2015. The Inspection Order stated:

“Following the inspection a hearing will be held at the residential premises to determine if an Order is to be made for repairs.”

Both the Inspection Order under section 8 and the hearing on the Lessor’s Notice of Termination were separate processes and, both were set for the same day, and this may have caused some confusion in the minds of the Lessor and Mr. Pitre.

The Commission will consider the content of the Form 7 and the Notice of Hearing with a view to deciding if some adjustment to those forms should be made to avoid confusion in future.

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 hereby denied.

DATED at Charlottetown, Prince Edward Island, this **10th** day of **March**, 2016.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, Q.C. Chair

(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.