



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16013
Order LR16-10**

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act, filed by Wayne Richards (represented by Randy Pitre) against Order LD16-127 issued by the Director of Residential Rental Property and dated April 26, 2016.

BEFORE THE COMMISSION
on Wednesday, the 11th day of May, 2016.

Douglas Clow, Vice-Chair
Michael Campbell, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan 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 (represented by Randy Pitre) against Order LD16-127 issued by the Director of Residential Rental Property and dated April 26, 2016.

Order

BACKGROUND

On May 6, 2016, the Commission received a Notice of Appeal from Randy Pitre (“Mr. Pitre”) on behalf of a lessor, Wayne Richards (the “Appellant”), requesting an appeal of Order LD16-127 dated April 26, 2016 issued by the Office of the Director of Residential Rental Property (the “Director”).

By way of background, on November 23, 2015 a lessee, George Walsh (the “Respondent”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

On March 30, 2016, a Notice of Hearing issued by the Director, dated the same date, was mailed to both the Appellant and the Respondent advising them of a hearing scheduled for April 22, 2016. Enclosed with the Notice of Hearing was a copy of the Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement.

The matter was heard by the Director on April 22, 2016 and Order LD16-127 states in part:

“AND WHEREAS a hearing was held on this matter on April 22, 2016 pursuant to Section 4.(2) of the Act. The lessee was present. The lessor was not present and had not contacted the Director to advise that he would be absent. The hearing proceeded in the absence of the lessor.”

In Order LD16-127 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessor shall return the lessee’s personal property listed in Appendix A or shall allow a representative designated by the lessee to retrieve the belongings from 14 Young St., Charlottetown, PEI or any other location where they may have been stored **forthwith**.*

2. *If the lessee has not received the personal property listed in Appendix A by Tuesday, May 9, 2016 at 12:00 noon, the Sheriff is directed to put the lessee in possession of the personal property listed in Appendix A.”*

DECISION

The Commission has disallowed this appeal for the reasons that follow.

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 **Act** thus provides a party to a decision or order of the Director with a conditional right of appeal. The condition that must be satisfied is that the party either appeared, or was represented, at the hearing before the Director.

Upon a review of the file, the Director had sent a Notice of Hearing to the Appellant approximately three weeks prior to the hearing of the matter. The Appellant did not appear or have a representative at the hearing before the Director. The Commission has therefore disallowed the Appellant's Notice of Appeal as the condition required to grant a right of appeal did not occur. 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 May 6, 2016 Notice of Appeal, filed by Randy Pitre on behalf of the Appellant Wayne Richards, is hereby disallowed.
2. Order LD16-127 issued by the Director remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this **11th** day of **May**, **2016**.

BY THE COMMISSION:

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

(sgd. Michael Campbell)

Michael Campbell, 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.