



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16022
Order LR16-15**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Wade MacWilliams against
Order LD16-315 dated October 13, 2016
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Monday, the 24th day of October, 2016.

M. Douglas Clow, Vice-Chair
John Broderick, 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, by Wade MacWilliams against Order LD16-315 dated October 13, 2016 issued by the Director of Residential Rental Property.

Order

On October 20, 2016, the Commission received a Notice of Appeal from a lessee, Wade MacWilliams (the Appellant) requesting an appeal of Order LD16-315 dated October 13, 2016 issued by the Director of Residential Rental Property (the Director).

The matter was heard by the Director on October 13, 2016. In Order LD16-315 it states, in part:

“AND WHEREAS a Notice of Hearing dated October 4, 2016 was sent to the lessor and the lessee advising them of a hearing scheduled for October 13, 2016 regarding the lessor’s application..

AND WHEREAS a hearing was held on this matter on October 13, 2106 pursuant to Section 4.(2) of the Act. The lessor was represented by John O’Brien. The lessee did not attend and did not call the Officer to request an adjournment. The hearing proceeded in the absence of the lessee.”

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 did not appear or have a representative 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 October 20, 2016 Notice of Appeal filed by Wade MacWilliams is hereby disallowed.
2. Therefore, Order LD16-315 issued by the Director remains in full force and effect.
3. Possession of the residential premises located at 514 Malpeque Road, Apartment #1, Charlottetown, PE be surrendered to the Respondent (lessor), CAPREIT, and the Sheriff is directed to put the Respondent in possession of the residential premises forthwith.

DATED at Charlottetown, Prince Edward Island, this 24th day of **October**, 2016.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. 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.

IRAC141y-SFN(2009/11)