



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16027
Order LR16-16**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act, by Eileen Jay against Order
LD16-332 dated November 10, 2016 issued
by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Friday, the 25th day of November, 2016.

Douglas Clow, Vice-Chair
John Broderick, Commissioner
Ferne MacPhail, 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 Eileen Jay against Order
LD16-332 dated November 10, 2016 issued
by the Director of Residential Rental
Property.

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BACKGROUND

On November 16, 2016 the Commission received a Notice of Appeal from a lessee, Eileen Jay (the “Appellant”), requesting an appeal of Order LD16-332 dated November 10, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 18, 2016 the Appellant filed a Form 6 – Application by Lessee to Set Aside Notice of Termination. Attached to that application were:

- a) Form 4 – Notice of Termination by Lessor of Rental Agreement dated October 17, 2016 signed by a lessor, Rory McLellan (the “Respondent”) on the basis that the lessee or a person admitted by the lessee has conducted themselves in a manner as to interfere with the quiet enjoyment of other lessees contrary to Section 14(1)(a) of the *Rental of Residential Property Act* (the “Act”); and
- b) Form 4 – Notice of Termination by Lessor of Rental Agreement dated October 17, 2016 signed by the Respondent for non-payment of rent.

The matter was heard by the Director on October 27, 2016 and in Order LD16-332 the Director ordered:

“IT IS THEREFORE ORDERED THAT

1. *The lessee’s application to set aside the Notice of Termination dated October 17, 2016 to be effective November 18, 2016 is approved.*
2. *The lessee’s application to set aside the Notice of Termination dated October 17, 2016 to be effective November 8, 2016 is not approved and the rental agreement is terminated effective November 18, 2016.*
3. *The lessee shall vacate the rental premises by 11:59 PM on November 18, 2016.*
4. *If the lessee does not vacate the premises in accordance with Paragraph 3 of this Order, then the lessor may apply without further notice to the lessee for an order directing the Sheriff to put the lessor in possession of the premises.”*

The Commission heard the appeal on November 24, 2016. The Appellant was present. The Respondent was present along with his witness John Pedersen.

EVIDENCE

The Appellant filed an additional exhibit, Exhibit E-22. The Appellant testified concerning the matter. The Appellant also testified that she intends to move out of the residential premises on or before December 1, 2016.

The Respondent testified concerning the matter. Mr. Pedersen also testified.

DECISION

The Commission has reviewed the documentation on file and the testimony presented by the parties.

The Commission accepts that the Appellant had paid \$300.00 cash to the Respondent outside the Credit Union on February 23, 2016 for which there was no receipt as the Respondent did not dispute the Appellant's testimony on this point and the Respondent, upon questioning from the panel, acknowledged that the rent was up to date as of April 2016.

In calculating how much rent has been paid, the Commission has not included the two voided receipts of \$300.00 each dated July 19, 2016 and August 16, 2016. The receipt number sequence strongly suggest that these voided receipts were actually issued some time in September 2016 and not on the actual dates indicated. This delay in issuing the receipts corroborates the Respondent's testimony that the Appellant had later requested them for other purposes.

Based on a calculation of the receipts, the Commission finds that the Appellant was \$300.00 in arrears with respect to the October 2016 rent. Accordingly, Director's Order LD16-332 stands as the arrears would need to have been reduced to \$0 to invalidate the October 17, 2016 Form 4.

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 and Director's Order LD16-332 is upheld subject to the following variation in date.**
2. **The Appellant (lessee) shall vacate the rental premises by 11:59 PM on November 30, 2016.**
3. **If the Appellant (lessee) does not vacate the premises by 11:59 PM on November 30, 2016, then the Respondent (lessor) may apply to the Director without further notice to the Appellant for an order directing the Sheriff to put the Respondent in possession of the premises.**

DATED at Charlottetown, Prince Edward Island, this **25th** day of **November**,
2016.

BY THE COMMISSION:

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

(sgd. John Broderick)

John Broderick, Commissioner

(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)