



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR16030
Order LR16-21**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Tammy and Harold Lutz against Order LD16-365 dated December 6, 2016 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Wednesday, the 21st day of December, 2016.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
Peter McCloskey, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Tammy and Harold Lutz against Order LD16-365 dated December 6, 2016 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On December 7, 2016 the Commission received a Notice of Appeal from a lessee, Tammy Lutz (“Ms. Lutz”), on behalf of herself and Harold Lutz (“Mr. Lutz”) (together the “Appellants”), requesting an appeal of Order LD16-365 dated December 6, 2016 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on November 21, 2016 the lessors, Harvey and Dorothy Butler (the “Respondents”) filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement, together with a Form 4 – Notice of Termination by Lessor of Rental Agreement dated October 19, 2016.

The matter was heard by the Director on November 29, 2016 and in Order LD16-365 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 11:00 AM, Wednesday, December 14, 2016.”*

The Commission heard the appeal on December 19, 2016. The Appellants were present. The Respondents were also present. Pamela Handrahan and Hoss Butler testified for the Respondents.

EVIDENCE

The Appellants told the Commission that there was no dog living in the premises. Ms. Lutz told the Commission that they have had visitors who have had small dogs. She acknowledged there were many boxes in the premises as they were in the process of packing their belongings in order to move out. Ms. Lutz testified that she had quit smoking and told the Commission that Mr. Lutz smokes outside the premises. The Appellants told the Commission that the December 2016 rent is now fully paid.

The Respondents told the Commission that they were originally told that the premises would be occupied by the Appellants with one grandchild “some of the time”. However, when the Appellants moved in, there was a woman with them and two children. On at least three occasions the Respondents could hear a dog barking when they had knocked on the door of the premises. The Respondents also testified that there was a strong smell of cigarette smoke in the premises. No smoking and no pets are permitted in the premises and both of these provisions are specified in the September 1, 2016 rental agreement (Exhibit E-7). The Respondents acknowledged that the rent for December 2016, due on December 1st, was paid on December 13, 2016.

DECISION

The Commission denies this appeal for the reasons that follow.

As explained in Director’s Order LD16-365, the Appellants [lessees] had not filed a Form 6 Application to Set Aside the Notice of Termination. While the Appellants had filed documentation to contest the Form 4 Notice of Termination, those documents were filed beyond the statutory ten day period for filing a set aside application. The **Rental of Residential Property Act** does not give the Director the jurisdiction to waive a statutory requirement.

Section 16 of the **Rental of Residential Property Act** reads:

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.

The **Rental of Residential Property Act** does not give the Commission the authority on appeal to waive a statutory provision or extend the deadline for filing a Form 6 application, or documents which in substance amount to a Form 6 application. Therefore, the Appellants are deemed to have accepted the Form 4 Notice of Termination by Lessor of Rental Agreement dated October 19, 2016.

For the above reasons, the Commission agrees with the reasoning of the Director in Director’s Order LD16-365.

In the evidence before the Commission, the Respondents acknowledged that they had accepted payment for the month of December 2016. Accordingly, the Commission will vary the date of possession set out in Director’s Order LD16-365.

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 LD16-365 is upheld, subject to a change in the date of possession.
2. The Appellants (lessees) shall vacate the residential rental premises by 11:59 PM on December 31, 2016.
3. If possession of the residential rental premises has not been surrendered to the Respondents (lessors) by 11:59 PM on December 31, 2016, the Sheriff is directed to put the Respondents [lessors] in possession of the residential premises at 9:00 AM, Tuesday, January 3, 2017.

DATED at Charlottetown, Prince Edward Island, this **21st** day of **December, 2016**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Peter McCloskey)

Peter McCloskey, 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)