



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR17008  
Order LR17-04**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Julie Gaudet against Order LD17-142 dated May 29, 2017 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 7th day of June, 2017.

John Broderick, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson  
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Commission Administrator  
Corporate Services and Appeals

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# Order

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## BACKGROUND

On May 30, 2017 the Commission received a Notice of Appeal from a lessee, Julie Gaudet (the “Appellant”), requesting an appeal of Order LD17-142 dated May 29, 2017 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on May 18, 2017, Ming Qi (“Mr. Qi”) on behalf of a lessor, TTM’s Fast Food Ltd. (the “Respondent”), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated April 18, 2017 signed by Mr. Qi.

The matter was heard by the Director on May 26, 2017 and in Order LD17-142 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 on Wednesday, May 31, 2017 at 2:00 PM.”*

The Commission heard the appeal on June 6, 2017. The Appellant was present and Mr. Qi represented the Respondent. Michael Gaudet testified for the Appellant. Jason Smith and Arron Gaudet testified for the Respondent.

## EVIDENCE

The Appellant and Michael Gaudet testified as to various events. The Appellant testified that she was preoccupied with a very important matter during the time that the Form 4 was served and thus she missed filing a Form 6 within the ten day time period.

Mr. Qi, on behalf of the Respondent, called Jason Smith and Arron Gaudet to testify. Their testimony countered the testimony offered by the Appellant and Michael Gaudet.

## DECISION

The appeal is denied for the reasons that follow.

Section 16 of the Rental of Residential Property Act (the **Act**) reads as follows:

*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.*

Emphasis added.

The Commission finds that the Appellant did not file with the Director a Form 6 Application to Set Aside in response to the April 18, 2017 Form 4 Notice of Termination. Section 16 of the Act requires that the Form 6 shall be filed within ten days of being served with said Form 4. Therefore, pursuant to subsection 16(3) of the **Act**, the Appellant is deemed to have accepted the termination date contained on the Form 4 Notice of Termination. The Commission agrees with the Director that the **Act** does not give the Director or the Commission the jurisdiction to extend the timeframe in which a lessee can make application to set aside the Notice of Termination.

Accordingly, the Commission agrees with the findings of the Director in Order LD17-142 and the appeal is denied.

**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.
2. Director's Order LD17-142 is hereby confirmed in its entirety.

**DATED** at Charlottetown, Prince Edward Island, this **7th** day of **June, 2017**.

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. Jean Tingley)

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Jean Tingley, 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)