



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR17020  
Order LR17-20**

**IN THE MATTER** of an appeal under Section 25 of the Rental of Residential Property Act (the "Act"), by Alicia MacArthur and Jarred Dingwell against Order LD17-235 dated October 10, 2017 issued by the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 18th day of October,  
2017.

John Broderick, Commissioner  
M. Douglas Clow, Vice-Chair  
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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On October 13, 2017, the Commission received a Notice of Appeal from two lessees, Alicia MacArthur and Jarred Dingwell (the "Appellants") requesting an appeal of Order LD17-235 dated October 10, 2017 issued by the Director of Residential Rental Property (the "Director").

## BACKGROUND

By way of background, on September 1, 2017 the Appellants filed with the Director an Application by Lessee to Set Aside a Notice of Termination. Attached to the application was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 23, 2017 and signed by a lessor, Killam Apartment REIT (the "Respondent").

The matter was heard by the Director on September 18, 2017. The Respondent's representative was present; however, the Appellants did not appear, or have a representative, at the hearing.

On September 25, 2017 the Director issued Order LD17-222 which stated:

***"IT IS THEREFORE ORDERED THAT***

- 1. The lessee's application to set aside the Notice of Termination by Lessor of Rental Agreement (Form 6) is dismissed.*
- 2. The Notice of Termination (Form 4) dated August 23, 2017 is valid however, the effective date is varied to September 29, 2017.*
- 3. The rental agreement is terminated as of September 29, 2017 and the lessee and all other occupants shall vacate the premises on or before September 29, 2017."*

On September 28, 2017 the Appellants appealed Director's Order LD17-222 to the Commission.

The Commission disallowed the Appellants' Notice of Appeal as the Appellants did not appear, or have a representative, at the hearing before the Director and in Order LD17-17 stated:

***“NOW THEREFORE, pursuant to the Island Regulatory and Appeals Commission Act and the Rental of Residential Property Act:***

***IT IS ORDERED THAT***

- 1. The September 28, 2017 Notice of Appeal filed by Alicia MacArthur and Jarred Dingwell is hereby disallowed.*
- 2. Therefore, Order LD17-222 issued by the Director remains in full force and effect.”*

On October 2, 2017, the Respondent, pursuant to Section 6.10 of the **Act**, requesting an Order that possession of the residential premises be surrendered to the Respondent and directing the Sheriff to put the Respondent in possession. Included with the application was a copy of Director’s Order LD17-222.

The Director heard the matter on October 10, 2017 and in order LD17-235 stated that:

***“IT IS 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 Monday, October 16, 2017 at 2:00 p.m.”*

On October 13, 2017 the Appellants appealed Director’s Order LD17-235 to the Commission.

The matter was heard by the Commission on October 18, 2017. The Appellant Jarred Dingwell (“Mr. Dingwell”) was present. The Respondent was represented by Wayne Beaton (“Mr. Beaton”).

## **EVIDENCE**

Mr. Dingwell testified that the rent for the apartment is paid in full for the month of October 2017. He stated that the Appellants are looking for another apartment but the earliest availability for another apartment would be November 1, 2017. He requested that the Commission vary the date for delivery of possession.

Mr. Beaton advised that given that rent was paid in full for the month of October 2017 that the Respondent would be prepared to allow the Appellants to stay until the end of October.

## **DECISION**

Given the agreement between the parties, the Commission varies the date for delivery of possession to November 1, 2017 at 9:00 a.m. In all other respects, Director’s Order LD17-235 is confirmed. However, in the event of extenuating circumstances, the Respondent may apply to the Commission for a re-consideration of the date for delivery of possession.

**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*

**IT IS ORDERED THAT**

1. Possession of the residential premises be surrendered to the Respondent lessor and the Sheriff is directed to put the lessor in possession of the residential premises on Wednesday, November 1, 2017 at 9:00 a.m.
2. In the event of extenuating circumstances, the Respondent lessor may apply to the Commission for a re-consideration of the date for delivery of possession.
3. In all other respects, Director's Order LD17-235 is confirmed.

**DATED** at Charlottetown, Prince Edward Island, this 18th day of **October**, 2017.

**BY THE COMMISSION:**

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(sgd. John Broderick)

John Broderick, Commissioner

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(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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(sgd. Jean Tingley)

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)