



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18008
Order LR18-06**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act (the "Act"), by Kyle Hambly
against Order LD18-098 dated March 21, 2018
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION

on Monday, the 9th day of April, 2018.

John Broderick, Commissioner
Douglas Clow, Vice-Chair

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 (the "Act"), by Kyle Hambly against Order LD18-098 dated March 21, 2018 issued by the Director of Residential Rental Property.

Order

On March 28, 2018, the Commission received a Notice of Appeal from a lessor, Kyle Hambly, (the "Appellant") requesting an appeal of Order LD18-098 dated March 21, 2018 issued by the Director of Residential Rental Property (the "Director").

The matter was heard by the Director on March 15, 2018. In Order LD18-098 it states, in part:

"AND WHEREAS a Notice of Hearing dated February 23, 2018 was sent to the lessor and the lessee advising them of a hearing scheduled for March 2, 2018 regarding the lessee's application ...

AND WHEREAS the lessor contacted the Officer on March 1, 2018 to request an adjournment and to provide his new mailing address. The Officer granted the lessor's request.

AND WHEREAS a second Notice of Hearing dated March 2, 2018 was sent to the lessor and the lessee advising them of a hearing scheduled for March 15, 2018 ...

*AND WHEREAS a hearing was held on this matter on March 15, 2018 pursuant to Section 4.(2)(d) of the **Act**. The lessee, Mohammed Raja, attended the hearing with John Putnam as his witness. The lessor did not attend the hearing and did not contact the Officer to request a second adjournment. The hearing proceeded in the lessor's absence.*

...

*The lessor did not appear at the hearing to give evidence to support retaining the security deposit. The lessor did not forward a Notice of Intention to Retain Security Deposit (Form 8) to the lessee or to the Officer, and did not request permission to file a Notice of Intention to Retain Security Deposit (Form 8) outside the time limits set by the **Act**. The lessor did not send the disputed funds to the Acting Director of Residential [sic] Property to hold in trust prior to the hearing.*

*As the lessor has not complied with any of the requirements of Section 10. of the **Act** with respect to the retention of a security deposit by a lessor, the Officer finds that the lessor is not entitled to the return of the security deposit of \$500.00 plus interest calculated as \$6.65 for a total of \$506.65.*

IT IS THEREFORE ORDERED THAT

1. *The lessor shall pay the sum of \$506.65 to the Acting Director of Residential Rental Property in trust for the lessee on or before April 19, 2018.
(Cheque to be made payable to: The Island Regulatory and Appeals Commission)”*

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.

DECISION

The **Act** grants a conditional right of appeal to a party of a decision or order of the Director. The Appellant did not appear or have a representative at the hearing before the Director. The Commission has disallowed the Appellant's Notice of Appeal as the statutory condition set out in Subsection 25.(1) of the **Act** was not met. 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 March 28, 2018 Notice of Appeal filed by Kyle Hambly is hereby disallowed.**
2. **Therefore, Order LD18-098 issued by the Director of Residential Rental Property remains in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this **9th** day of **April, 2018**.

BY THE COMMISSION:

(sgd. John Broderick)

John Broderick, Commissioner

(sgd. Douglas Clow)

Douglas Clow, Vice-Chair

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)