



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18037
Order LR18-30**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act filed by Daniel McCarthy against
Order LD18-292 dated September 12, 2018
issued by the Director of Residential Rental
Property.

BEFORE THE COMMISSION

on Wednesday, the 26th day of September,
2018.

John Broderick, Commissioner
M. Douglas Clow, Vice-Chair
Jean Tingley, 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 filed by Daniel McCarthy against Order LD18-292 dated September 12, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On September 18, 2018 the Commission received a Notice of Appeal from a lessee, Daniel McCarthy (the "Appellant"), requesting an appeal of Order LD18-292 dated September 12, 2018 issued by the Director of Residential Rental Property (the "Director").

By way of background, on September 4, 2018 Lori Loggie ("Ms. Loggie"), representing the lessor G. Stewart MacKay Real Estate (the "Respondent"), filed with the Director a Form 2 - Application for Enforcement of Statutory or Other Conditions of Rental Agreement seeking an order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession. Attached to the Form 2 was a Form 4 - Notice of Termination by Lessor of Rental Agreement dated August 6, 2018.

The matter was heard by the Director on September 12, 2018 and in Order LD18-292 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. Possession of the residential premises shall be surrendered to the lessor and the Sheriff is directed to put the lessor in possession of the residential premises at 2:00 PM on Tuesday, September 18, 2018."

The Commission heard the appeal on September 26, 2018. The Appellant was present. The Respondent was represented by Ms. Loggie and Steve Loggie ("Mr. Loggie").

EVIDENCE

The Appellant provided Exhibits E-7, E-9 and E-10 at the hearing. He testified that he was not aware that he could have filed an application to set aside the Form 4 Notice of Termination by Lessor of Rental Agreement ("Form 4"). He testified that he has received several Form 4s which he believed were "uncalled for" and in some cases paid the outstanding rent later than 10 days and was allowed to stay. He acknowledges that he is in arrears of rent but noted he tried to pay the arrears to the Respondent's representatives at the September 12, 2018 hearing before the Director; however, the Respondent's representatives would not accept payment.

Mr. Loggie and Ms. Loggie provided Exhibit E-8 at the hearing. They stated that while they had been patient with the Appellant in the past, he has been habitually late paying rent and had failed to pay the arrears of rent within 10 days of receiving the August 6, 2018 Form 4.

DECISION

The appeal is denied and Director's Order LD18-292 is confirmed, subject to a change in the date of possession.

The Commission finds that the Appellant did not file a Form 6 Application by Lessee to Set Aside Notice of Termination within ten days of receiving the August 6, 2018 Form 4. Pursuant to subsection 16.(3) of the *Rental of Residential Property Act*, the Appellant is thereby "...deemed to have accepted the termination on the effective date of the notice."

The Commission agrees with all of the findings of the Director contained in Order LD18-292. However, the Commission varies the date of possession to 11:59 p.m. on Sunday, September 30, 2018.

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 LD18-292 is confirmed subject to the following.**
2. **Possession of the residential premises shall be surrendered to the Respondent lessor and the Sheriff is directed to put the Respondent lessor in possession of the residential premises at 11:59 p.m. on Sunday, September 30, 2018.**

DATED at Charlottetown, Prince Edward Island, this **26th** day of **September, 2018**.

BY THE COMMISSION:

(sgd. John Broderick)
John Broderick, Commissioner

(sgd. M. Douglas Clow)
M. Douglas Clow, Vice-Chair

(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)