



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR18041  
Order LR18-34**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act filed by Amanda Lannigan  
against Order LD18-307 dated September 27,  
2018 issued by the Director of Residential  
Rental Property.

**BEFORE THE COMMISSION**  
on Thursday, the 11th day of October, 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 Amanda Lannigan against Order LD18-307 dated September 27, 2018 issued by the Director of Residential Rental Property.

---

# Order

---

## BACKGROUND

On October 4, 2018 the Commission received a Notice of Appeal from a lessee, Amanda Lannigan (the “Appellant”), requesting an appeal of Order LD18-307 dated September 27, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on September 12, 2018 a lessor, Montague Housing Authority (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 July 5, 2018.

The matter was heard by the Director on September 27, 2018 and in Order LD18-307 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 by Thursday, October 4, 2018 at 12:00 noon.”*

The Commission heard the appeal on October 9, 2018. The Appellant was present. The Respondent was represented by Kathleen Hamilton (“Ms. Hamilton”) and Heather Kemp.

## EVIDENCE

The Appellant testified that she received nothing in the mail advising her of the date and time for the hearing before the Director. She stated that if she had received notice, she would have attended that hearing as the matter is very important.

The Appellant testified that she has a health issue which affects her mobility. She stated that she did not realize there was a deadline for filing the financial and insurance information. She stated that she had the insurance information submitted as Exhibit E-12 but forgot to bring her financial information. She noted that her mother has money ready to pay October's rent. She expressed concerns over the location of her current unit and has requested a transfer.

Ms. Hamilton testified that the Respondent's staff sent a notice to the Appellant dated April 18, 2018 requesting that the documents be provided to the Respondent as soon as possible and during the month of May. A second notice dated June 13, 2018 was then sent. A third and final notice was sent June 27, 2018.

Ms. Hamilton testified that between the second and the third notices the Appellant attended the office to pay her rent and at that time Ms. Hamilton asked the Appellant if she had the requested documents. Ms. Hamilton testified that on July 5, 2018 she personally served the Appellant with a Form 4 Notice of Termination by Lessor of Rental Agreement which stated that the Appellant had not provided the required financial and insurance documents. Ms. Hamilton testified that when she served the Appellant with the Form 4 she again asked the Appellant if she had the requested documents.

## DECISION

The appeal is denied and Director's Order LD18-307 is confirmed, subject to an adjustment in the rental agreement termination date.

The parties entered into a rental agreement dated April 29, 2013. Schedule "D", contains additional terms or conditions of the rental agreement binding upon the parties. Clause 2 of Schedule "D" specifies that the Appellant agrees to an annual rent review and requires the Appellant to file household income details each year on or before the date specified by the Respondent. Clause 13 of Schedule "D" requires the Appellant to maintain tenant's insurance including a sewer and water extension. The Appellant is required to submit proof of such insurance each year on or before a date specified by the Respondent.

There is no evidence before the Commission to suggest that the Appellant applied to the Director within 10 days of service of the Form 4 to set aside the Form 4, pursuant to section 16 of the **Rental of Residential Property Act** (the "**Act**"). Section 16 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.*

In the present appeal, the Commission finds that the Appellant did not file an application to set aside (Form 6). Accordingly, under the **Act**, the Appellant is deemed to have accepted the termination of the rental agreement. The **Act** does not provide any exemption from the deeming provision of subsection 16(3) nor does it provide the Director or the Commission, with any legal or equitable authority to make any exceptions to this provision.

Accordingly, the appeal is denied and Director's Order LD18-307 is upheld subject to an adjustment in the date of possession to Thursday, October 18, 2018 at 12:00 noon.

**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 LD18-307 is confirmed subject to the following revised date of possession.**
3. **Possession of the residential premises be surrendered to the Respondent (lessor) and the Sheriff is directed to put the Respondent (lessor) in possession of the residential premises by Thursday, October 18, 2018 at 12:00 noon.**

**DATED** at Charlottetown, Prince Edward Island, this **11th** day of **October**, **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)