



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18039
Order LR18-40**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Tim James Holdings Ltd.
against Order LD18-293 dated September 12,
2018 issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 26th day of October, 2018.

M. Douglas Clow, Vice-Chair
John Broderick, Commissioner
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 by Tim James Holdings Ltd. against Order LD18-293 dated September 12, 2018 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On September 28, 2018 the Commission received a Notice of Appeal from a lessor, Tim James Holdings Ltd. (the “Appellant”), requesting an appeal of Order LD18-293 dated September 12, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on August 21, 2018, two lessees, Mark Driscoll and Alanna Manning (the “Respondents”) filed with the Director a Form 6 – Application by Lessee to Set Aside Notice of Termination. Attached to the Form 6 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated August 16, 2018 to be effective October 30, 2018 signed by the Appellant.

The matter was heard by the Director on September 11, 2018 and in Order LD18-309 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessees’ application to Set Aside the Notice of Termination by Lessor of Rental Agreement (Form 6) dated August 21, 2018 is allowed, and the rental agreement shall continue to be in full force and effect.”*

The Commission heard the appeal on October 25, 2018. The Appellant was represented by Tim James (“Mr. James”) who appeared by way of telephone conference call. The Respondents did not appear at the hearing.

EVIDENCE

Mr. James testified as to the nature of the renovations required to the residential unit. He testified there are moisture problems in the building’s basement and concerns about the development of mold. The remedy is to install polyethylene barrier over the clay basement floor and then pour a concrete floor in the basement. The distance between the Appellant’s building and the adjacent building is insufficient for a concrete truck to go in the lane. Accordingly, holes will need to be cut through the floor of the residential unit and concrete pumped through the holes. Given the disruption to the residential unit, Mr. James also plans substantial renovations. Mr. James requests that the rental agreement be terminated to allow the work to commence.

DECISION

The appeal is allowed for the reasons that follow.

The Commission notes that a Notice of Appeal hearing was mailed to the Respondents at their last known mailing address on October 5, 2018. When the Respondents failed to appear at the scheduled time, Commission staff attempted to call the Respondents to remind them of the hearing. The Commission waited an additional 20 minutes before commencing the hearing. Accordingly, the Commission is satisfied that the Respondents received notification of the date and time of the appeal hearing.

Having heard the unrefuted testimony of Mr. James and having reviewed the additional documentation provided with the Appellant's appeal, the Commission is satisfied that the work to address the moisture issue is required and this work, along with other renovations, can commence. The Commission is also satisfied that the Appellant and Mr. James are acting in good faith.

Accordingly, the appeal is allowed, and the rental agreement between the Appellant and the Respondents is hereby terminated as of 11:59 p.m. Wednesday October 31, 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 allowed.**
2. **The rental agreement between the Appellant lessor and the Respondent lessees is terminated effective 11:59 p.m. Wednesday October 31, 2018.**

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

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. John Broderick)

John Broderick, Commissioner

(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)