



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18047
Order LR18-42**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act (the "Act"), by Nicole MacDonald
against Order LD18-328 dated October 30,
2018 issued by the Director of Residential
Rental Property.

BEFORE THE COMMISSION

on Tuesday, the 13th day of November, 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 Nicole MacDonald against Order LD18-328 dated October 30, 2018 issued by the Director of Residential Rental Property.

Order

On November 6, 2018, the Commission received a Notice of Appeal from a lessee, Nicole MacDonald (the "Appellant"), requesting an appeal of Order LD18-328 dated October 30, 2018 issued by the Director of Residential Rental Property (the "Director").

The matter was heard by the Director on October 25, 2018. In Order LD18-328 it states, in part:

"AND WHEREAS a Notice of Hearing dated October 17, 2018 was sent to the lessor and the lessee advising them of a hearing scheduled for October 25, 2018 regarding the lessee's application ...

AND WHEREAS a hearing was held on this matter on October 25, 2018 pursuant to Section 4.(2)(d) of the Act. The lessor was represented at the hearing by Housing Officer, Marvin Clow. The lessee, Nicole MacDonald, did not attend the hearing and did not contact the Office of the Director of Residential Rental Property to request an adjournment. The hearing proceeded in the absence of the lessee.

...

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 2:00 p.m. on Friday, November 2, 2018."*

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 November 6, 2018 Notice of Appeal filed by Nicole MacDonald is hereby disallowed.
2. Therefore, Order LD18-328 issued by the Director of Residential Rental Property remains in full force and effect.

DATED at Charlottetown, Prince Edward Island, this **13th** day of **November, 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)