



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR18053
Order LR18-47**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act filed by Todd Jay against Order
LD18-354 dated November 15, 2018 issued by
the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 21st day of December, 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 Todd Jay against Order LD18-354 dated November 15, 2018 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On November 26, 2018 the Commission received a Notice of Appeal from a lessee, Todd Jay (the “Appellant”), requesting an appeal of Order LD18-354 dated November 15, 2018 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on October 18, 2018 a lessor, Ground Floor Property Management PEI (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 September 4, 2018.

The matter was heard by the Director on October 25, 2018 and in Order LD18-354 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 Thursday, November 22, 2018 at 12:00 noon.”*

The Commission heard the appeal on December 19, 2018. The Appellant was present along with his father Joseph Jay. The Respondent was represented by Pete Doucette (“Mr. Doucette”).

EVIDENCE

The Appellant acknowledged that one of his dogs, the German Shepard, does bark quite a bit noting that the dog is territorial. The Appellant stated that he had both dogs when he moved into the apartment and the previous property manager was aware of this.

Mr. Doucette stated that he has received complaints from other tenants concerning the barking dog. Mr. Doucette noted that the barking dog interferes with the quiet enjoyment of other tenants.

DECISION

The appeal is denied.

At the hearing before the Commission, the Commission notes the admission of the Appellant that one of his dogs frequently barks. Mr. Doucette has testified that he has received complaints about the barking from other tenants.

The Commission finds that the frequent barking of one of the Appellant's dogs interferes with the quiet enjoyment of other lessees.

The Commission agrees with and adopts the findings of the Director in Order LD18-354.

As noted by the Director in Order LD18-354, the Appellant did not file a Form 6 Application by Lessee to Set Aside Notice of Termination within 10 days of receiving the September 4, 2018 Form 4. The requirements for setting aside a Form 4 are set out in 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). Under subsection 16(3) of 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 Commission confirms Director's Order LD18-354 subject to a variation in the date stated in that Order. The new date of possession is January 7, 2019 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. **Directors' Order LD18-354 is confirmed subject to the following variation.**

3. **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 on Monday, January 7, 2019 at 12:00 noon.**

DATED at Charlottetown, Prince Edward Island, this **21st** day of **December**, **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)