



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19006
Order LR19-03**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Kimberly Skevington against Order LD19-037 dated January 28, 2019 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 15th day of February, 2019.

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 by Kimberly Skevington against Order LD19-037 dated January 28, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On February 1, 2019 the Commission received a Notice of Appeal from a lessee, Kimberly Skevington (the "Appellant"), requesting an appeal of Order LD19-037 dated January 28, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on January 17, 2019 Allan Palmer ("Mr. Palmer") of NCD Property Management, on behalf of a lessor Stefano Mazzanti (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 December 5, 2018.

The matter was heard by the Director on January 25, 2019 and in Order LD19-037 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 12:00 p.m. on Monday, February 4, 2019."

The Commission heard the appeal on February 12, 2019. The Appellant was present. The Respondent was represented by Mr. Palmer.

EVIDENCE

The Appellant testified that she moved into the residential premises in November 2018. She testified that she paid the November 2018 rent of \$910.00 in full, but did not pay the security deposit. She acknowledged that she did not pay December's rent on December 1, 2018. On December 5, 2018 she offered to pay \$500.00 towards December's rent with the balance of the rent to be paid later, but the Respondent did not accept this payment.

The Appellant testified that she sent an e-transfer of \$910.00 to the Respondent on December 28, 2018. She testified that she felt that this payment had been accepted and invalidated the Form 4 Notice. She testified that she learned at the hearing before the Director on January 25, 2019 that the Respondent had not accepted her December 28, 2018 payment.

Mr. Palmer testified that the Appellant was informed that the security deposit must be paid within 30 days of the commencement of the rental agreement. He testified that the Form 4 was placed in the Appellant's mailbox on December 5, 2018. He testified that he had received a text message on December 26, 2018 that the security deposit, December's rent and January's rent would be paid on the first of the month. When these payments were not received in early January 2019, the Respondent filed the Form 2 with the Director.

DECISION

The appeal is denied and Director's Order LD19-037 is confirmed, subject to a variance in the date the Sheriff is directed to put the Respondent in possession of the residential premises.

From a review of the documents filed with the Commission, the Commission finds that the Appellant did not file a Form 6 Application by Lessee to Set Aside Notice of Termination within 10 days of being served with the December 5, 2018 Form 4.

The Commission also finds that the Appellant did not pay the outstanding rent within 10 days of receiving the Form 4.

The Commission also finds that the Appellant did not pay the security deposit within one month of entering into the rental agreement as required in Section 14.(1)(c) of the Rental of Residential Property Act (the "**Act**").

The requirements for setting aside a Form 4 are set out in section 16 of 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.

As the Appellant did not pay the outstanding arrears of rent within 10 days of the service of the Form 4, the Form 4 remains valid. As the Appellant did not file a Form 6 Application by Lessee to Set Aside Notice of Termination, subsection 16(3) of the **Act** deems the Appellant 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 LD19-037 subject to a variation in the date stated in that Order. The new date of possession is Friday, February 22, 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. **Director's Order LD19-037 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 Friday, February 22, 2019 at 12:00 noon.**

DATED at Charlottetown, Prince Edward Island, this **15th** day of **February**, 2019.

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)