



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19009  
Order LR19-04**

**IN THE MATTER** of an appeal filed  
under Section 25 of the Rental of Residential  
Property Act by Robert Livingston against  
Order LD19-049 dated February 6, 2019 issued  
by the Office of the Director of Residential  
Rental Property.

**BEFORE THE COMMISSION**

on Monday, the 25th day of February, 2019.

John Broderick, Commissioner  
M. Douglas Clow, Vice-Chair  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by Robert Livingston against Order LD19-049 dated February 6, 2019 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On February 12, 2019 the Commission received a Notice of Appeal from a lessee, Robert Livingston (the “Appellant”), requesting an appeal of Order LD19-049 dated February 6, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 21, 2019 the Appellant 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 January 11, 2019 signed by Bruce Allen (“Mr. Allen”) of Diversified Property & Management Services on behalf of the lessor, Bosco Enterprises Ltd. (the “Respondent”).

The matter was heard by the Director on February 1, 2019 and in Order 19-049 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessee’s application to set aside the Notice of Termination (Form 6) dated January 21, 2019 is dismissed.*
- 2. The Notice of Termination dated January 11, 2019 for effect January 31, 2019 is valid however the effective date is varied to February 15, 2019 at 4 pm.*
- 3. The rental agreement is terminated effective February 15, 2019 at 4 pm and the lessee shall vacate the residential premises by 4 pm on February 15, 2019.*
- 4. If the lessee fails to vacate the premises in accordance with Paragraph 3 of this Order, the Sheriff is directed to put the lessor in possession of the residential premises on Tuesday, February 19, 2019 at 12:00 noon.”*

The Commission heard the appeal on February 22, 2019. The Appellant was present. Mr. Allen testified on behalf of the Respondent.

## EVIDENCE

The Appellant testified that in November 2017 a pipe broke in the unit above him causing water damage within his apartment and resulting in a loss of some of his personal items. He told the Commission that he should be compensated for his loss. He acknowledged that he has not paid rent for the months of January and February 2019.

The Appellant testified that he is willing to pay rent for the month of February 2019. He stated that he refuses to pay the rent for January 2019 “on principal” as he sees January’s rent as compensation for his loss of more than one year earlier.

In response to questioning from the Commission, the Appellant acknowledged that he is now aware that a tenant cannot withhold rent.

Mr. Allen testified that the Appellant has been a tenant for approximately four years. Mr. Allen reviewed the Respondent’s Client Revenue Detail Report (Exhibit E-8) and confirmed that rent had not been paid for January and February 2019.

## DECISION

The appeal is denied and Director's Order LD19-049 is confirmed, subject to a variance in the date the Sheriff is directed to put the Respondent in possession of the residential premises.

It is clear from the evidence that rent has not been paid for January and February 2019. The Appellant has indicated a willingness to pay the February rent if he is allowed to stay. However, the Appellant refuses to pay the January rent “on principal” even though he is now aware that a tenant cannot withhold rent.

Subsections 13(1) and 13.(2) of the **Rental of Residential Property Act** (the “**Act**”) set out the process a lessor may follow where a lessee fails to pay rent:

### *13. Failure to pay rent*

*(1) Where a lessee fails to pay rent in accordance with the rental agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.*

### *Payment of rent after notice*

*(2) A lessee may, within ten days of being served with a notice of termination under subsection (1) deliver to the lessor all the rent due as of that date, whereupon the notice shall be void.*

The Respondent served a January 11, 2019 Form 4 Notice of Termination by Lessor of Rental Agreement on the Appellant, noting that rent due on January 1, 2019 was not paid. The Appellant did not pay the rent owing within ten days of receiving the Form 4.

A lessee must pay their rent. If a lessee believes that a lessor owes money or compensation, the lessee is still obligated to continue to pay the rent and should contact the Director to determine whether a remedy may be sought under the **Act**. A lessee is not permitted to withhold rent.

Section 6.10 of the **Act** authorizes a delivery of possession:

*10. Delivery of Possession*

*Where notice of termination has been given in accordance with this Act, and all remedies in relation thereto have been exhausted, the lessee shall deliver up possession of the residential premises. 1988,c.58,s.6.*

The Commission also notes and adopts the following reasons set out by the Director in Order LD19-049:

*The Acting Director notes that the **Act** gives a lessee 10 days after the receipt of a Notice of Termination (Form 4) to pay the rent and invalidate the Notice of Termination. If the lessee misses the deadline, as the lessee did, then the rental agreement is terminated. The Acting Director has no jurisdiction to compel a lessor to accept payment after the deadline or to re-instate the rental agreement. The Acting Director notes that the lessee filed an Application to Set Aside the Notice of Termination (Form 6) so that he could explain his story as to why he did not pay his rent for January 2019. Further, the Acting Director notes that the lessee was told by this Office to pay his rent on January 21, 2019 when he came to file his Form 6 Application. The Acting Director notes that the lessee may be in the wrong forum as the lessee thought that we had jurisdiction over insurance disputes between the parties and we do not. Unfortunately the lessee is now in a position where he must move.*

Accordingly, the Commission confirms Director's Order LD19-049 subject to a variation in the date of possession. The new date of possession is Thursday, February 28, 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 LD19-049 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 Thursday, February 28, 2019 at 12:00 noon.**

**DATED** at Charlottetown, Prince Edward Island, this **25th day of February, 2019.**

**BY THE COMMISSION:**

(sgd. John Broderick)

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John Broderick, Commissioner

(sgd. M. Douglas Clow)

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M. Douglas Clow, Vice-Chair

(sgd. Jean Tingley)

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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)