



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LR19008  
Order LR19-05**

**IN THE MATTER** of an appeal filed under Section 25 of the Rental of Residential Property Act by CAPREIT against Order LD19-026 dated January 23, 2019 issued by the Office of the Director of Residential Rental Property.

**BEFORE THE COMMISSION**  
on Wednesday, the 27th day of February, 2019.

John Broderick, Commissioner  
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 CAPREIT against Order LD19-026 dated January 23, 2019 issued by the Office of the Director of Residential Rental Property.

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# Order

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## BACKGROUND

On February 5, 2019 the Commission received a Notice of Appeal from a lessor, CAPREIT (the “Appellant”) requesting an appeal of Order LD19-026 dated January 23, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on January 7, 2019 the Appellant filed with the Director an Application by Lessor for an Order seeking termination of a rental agreement because the lessee, Krista Currie (the “Respondent”) is persistently and/or habitually late in the payment of rent.

The matter was heard by the Director on January 18, 2019 and in Order LD19-026 the Director ordered:

***“IT IS THEREFORE ORDERED THAT***

- 1. The lessor’s application to terminate the rental agreement on the basis that the lessee is persistently or habitually late with the payment of rent is dismissed.”*

The Commission heard the appeal on February 26, 2019. The Appellant was represented by Jill Hobb and Carolyn Ramsay. The Respondent was also present.

## EVIDENCE

The representatives for the Appellant reviewed the Statement of Account by Transaction Date (Exhibit E-8) noting multiple times the Respondent was late paying rent over the years. The representatives of the Appellant testified that many Form 4s were issued over the years and many text messages were sent seeking payment of rent. The Appellant’s representatives acknowledged that the Respondent is currently up to date in her rent but they are concerned that this is only temporary.

The Respondent testified that her financial situation has improved and she is now paying on time. She testified that she is up to date in her rent and has already paid her rent for March 2019. She testified that she is now able to pay her rent in full on the first day of each month.

## DECISION

The appeal is denied and Director's Order LD19-026 is confirmed.

The Appellant's representatives submit that the Respondent has been habitually and/or persistently late with the payment of rent. The Respondent is currently up to date in her rent.

Subsection 13.(3) of the **Rental of Residential Property Act** (the **Act**) reads:

*13.(3) Where a lessee is persistently or habitually late in the payment of rent the lessor may apply to the Director for such order, including termination of the rental agreement as the Director considers just.*

While the Appellant has provided evidence of late payment of rent stretching back to 2014, such a long history suggests that the Appellant condoned such late payment in the past.

By filing a subsection 13.(3) application, and pursuing that application with the Director and on appeal through the Commission, the Appellant has now made it very clear to the Respondent that it no longer condones late payment of rent.

The Commission agrees with the Director that to be successful on a subsection 13.(3) application, a lessor must establish a recent pattern of habitual or persistent late payment of rent.

In Order LD19-026 the Director stated:

*Based on a balance of probabilities, the Officer finds that the lessor has failed to establish that the lessee has a **recent pattern** of habitual or persistent late payment of rent. Therefore, the lessor's application to terminate the rental agreement is dismissed, and the rental agreement shall continue to be in full force and effect.*

*However, the Officer emphasizes that the lessee **must** pay the rent on or before the day it is due, and that any further incidents of this nature may end with a different result.*

The Commission agrees with the above finding of the Director. The Commission also agrees with the Director's cautionary statement quoted above.

The Appellant's representatives have made it very clear that they expect rent to be paid on time. Having gone through the process before the Director and the Commission, the Respondent ought to be very aware of this and ought to understand the serious consequences of failing to pay her rent on time each and every month.

Accordingly, the Commission confirms Director's Order LD19-026.

**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 LD19-026 is confirmed.

**DATED** at Charlottetown, Prince Edward Island, this **27th** day of **February**, **2019**.

**BY THE COMMISSION:**

(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)

