



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19018
Order LR19-11**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act by Angie Lynn Rayner against
Order LD19-135 dated April 11, 2019 issued
by the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Thursday, the 25th day of April, 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 under Section 25 of the Rental of Residential Property Act by Angie Lynn Rayner against Order LD19-135 dated April 11, 2019 issued by the Director of Residential Rental Property.

Order

BACKGROUND

On April 16, 2019 the Commission received a Notice of Appeal dated the same date signed by a lessee, Angie Lynn Rayner (the “Appellant”) requesting an appeal of Order LD19-135 dated April 11, 2019 issued by the Director of Residential Rental Property (the Director).

By way of background, on April 1, 2019 Brigitte Deacon (“Ms. Deacon”), on behalf of a lessor, Gordon MacDonnell (the “Respondent”), filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement to which was attached a Form 4 – Notice of Termination by Lessor of Rental Agreement dated March 11, 2019.

The matter was heard by the Director on April 11, 2019 and in Order LD19-135 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 on April 16, 2019 at 12:00 noon.”*

The Commission heard the appeal on April 24, 2019. The Appellant appeared in person. The Respondent was also present and was accompanied by his property manager, Ms. Deacon.

EVIDENCE

The Appellant testified that she moved into the apartment in April 2018. She told the Commission that she had a verbal agreement with the previous landlord to pay her rent in two payments each month. She stated that the Respondent should be aware of this from the payment record.

The Appellant testified that the previous landlord “illegally” raised the rent.

The Appellant testified that she tried to make rental payments during March 2019 but Ms. Deacon would not accept her money.

Ms. Deacon testified that the Respondent acquired the building in January 2019 and since that time a lot of repair work has been done to the building. Ms. Deacon stated that the previous lessor had received an Order from the Director in June 2018 authorizing an increase in rent.

Ms. Deacon testified that the rental agreement requires rent to be paid by the first day of each month. She further testified as to her efforts in early March 2019 to seek payment of the rent owed by the Appellant. After these efforts failed, she served the Appellant with a Form 4 Notice of Termination by Lessor of Rental Agreement on March 11, 2019. On March 20, 2019 a partial payment of \$350.00 was received. The remaining rent for the month of March 2019 was not paid.

The Respondent testified that he was not aware until recently that the previous lessor had been accepting payment of rent in two payments per month.

DECISION

The appeal is denied and Director's Order LD19-135 is confirmed.

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 March 11, 2019 Form 4.

The Commission also finds that the Appellant did not pay all of the outstanding rent within 10 days of receiving the 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 of the **Act** 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 full 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.

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 LD19-135 is confirmed.

DATED at Charlottetown, Prince Edward Island, this **25th** day of **April**, 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)