



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19026
Order LR19-17**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Starlene Perry against Order
LD19-193 dated May 15, 2019 issued by the
Office of the Director of Residential Rental
Property.

BEFORE THE COMMISSION
on Wednesday, the 5th day of June, 2019.

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

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 Starlene Perry against Order LD19-193 dated May 15, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On May 28, 2019 the Commission received a Notice of Appeal from a lessee, Starlene Perry (the "Appellant"), requesting an appeal of Order LD19-193 dated May 15, 2019 issued by the Director of Residential Rental Property (the "Director").

By way of background, on May 6, 2019 a lessor, Pat MacKinnon on behalf of herself and Alfred Shepard (the "Respondents"), 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 lessors and directing the Sheriff to put the lessors in possession. Attached to the Form 2 was a Form 4 - Notice of Termination by Lessor of Rental Agreement dated April 11, 2019.

The matter was heard by the Director on May 15, 2019 and in Order LD19-193 the Director ordered:

"IT IS THEREFORE ORDERED THAT

1. Possession of the residential premises be surrendered to the lessors and the Sheriff is directed to put the lessors in possession of the residential premises on Wednesday, May 22, 2019 at 10:00 am."

The Commission heard the appeal on June 5, 2019. The Appellant was present. The Respondents were represented by Reg MacKinnon ("Mr. MacKinnon").

EVIDENCE

The Appellant acknowledged she did not pay the rent. The Appellant told the Commission that she offered a partial payment of rent on April 1, 2019 but the Respondents refused to accept the partial payment.

Mr. MacKinnon told the Commission he was representing his mother. Mr. MacKinnon testified that the Respondents are ready to take possession of the unit.

DECISION

The appeal is denied and Director's Order LD19-193 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 April 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 Commission notes that a lessor is under no obligation to accept partial payments of rent from a lessee.

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 LD19-193 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **5th** day of **June, 2019**.

BY THE COMMISSION:

(sgd John Broderick)

John Broderick, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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.