



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR19056
Order LR19-37**

IN THE MATTER of an appeal filed
under Section 25 of the Rental of Residential
Property Act by Marcie Van Colen against
Order LD19-433 dated September 19, 2019
issued by the Office of the Director of
Residential Rental Property.

BEFORE THE COMMISSION
on Wednesday, the 16th day of October, 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 Marcie Van Colen against Order LD19-433 dated September 19, 2019 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On September 24, 2019 the Commission received a Notice of Appeal from a lessee, Marcie Van Colen (the “Appellant”), requesting an appeal of Order LD19-433 dated September 19, 2019 issued by the Director of Residential Rental Property (the “Director”).

By way of background, on September 5, 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 May 31, 2019, 2019 signed by Rocky Arsenault (“Mr. Arsenault” on behalf of a lessor, Remax Harbourside Realty Ltd. (the “Respondent”).

The matter was heard by the Director on September 18, 2019 and in Order LD19-433 the Director ordered:

“IT IS THEREFORE ORDERED THAT

- 1. The lessee’s Application by Lessee to Set Aside Notice of Termination (Form 6) dated September 5, 2019 is dismissed.*
- 2. The lessor’s Notice of Termination by Lessor of Rental Agreement (Form 4) dated September 5, 2019 for effect November 5, 2019 is valid.*
- 3. The rental agreement between the parties shall terminate as of November 5, 2019 at 11:59 p.m. and the lessee shall vacate the premises by that date and time.*
- 4. If the lessee fails to vacate the premises in accordance with Paragraph 3 of this Order, then the Sheriff is directed to put the lessor in possession of the premises by **12:00 noon on November 6, 2019.***
- 5. All other terms and conditions of the rental agreement, including the payment of rent, shall remain in effect.*
- 6. The Office of the Director of Residential Rental Property reserved the right to inspect the premises, with notice to the lessor, to ensure that the lessor in fact completes the renovations listed in Appendix “A” of the Notice of Termination (Form 4) dated September 5, 2019 for effect November 5, 2019.”*

The Commission heard the appeal on October 11, 2019. The Appellant was present. The Respondent was represented by Mr. Arsenault.

EVIDENCE

The Appellant acknowledged that the Respondent needs to do work on the basement. The Appellant told the Commission that she has found another residential unit but is unable to move into that unit immediately and thus needs to stay in the residential premises for up to one additional month after the termination date set out in Director's Order LD19-433.

The Appellant stated that her rent payment was up to date.

Mr. Arsenault told the Commission that the Respondent can stay an additional month, provided that she pays her rent for that additional time period and that there is a written record of this arrangement.

Mr. Arsenault stated that the most recent rent payment was late but acknowledged that the rent was now up to date.

DECISION

The appeal is denied and Director's Order LD19-433 is confirmed subject to a variance, by consent of both parties, providing an extension of up to one month to the termination date of the rental agreement. This extension is conditional on the rent being fully paid and current.

At the hearing, the parties provided sworn testimony and agreed to extend the termination date of the rental agreement by up to one month. Both parties stated that there were no arrears of rent as of the Commission hearing date.

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 LD19-433 is confirmed, subject to a variance by consent of both parties. This variance is an extension to the termination date and date of possession set out in Director's Order LD19-433 of up to one month. This extension is conditional on the rent being current.
3. For greater certainty, "the rent being current" means that the Appellant (lessee) shall be required to continue to pay rent for the remaining period she is in possession of the residential premises.
4. In the event the rent is not current, the Respondent (lessor) shall be entitled to possession on the terms set out in Director's Order LD19-433.

DATED at Charlottetown, Prince Edward Island, this **16th day of October, 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.