



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Dockets LR20007
Order LR20-11**

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Craig Myers and Samantha McInnis against Order LD20-081 dated March 5, 2020 issued by the Office of the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Friday, the 5th day of June, 2020.

Erin T. Mitchell, Commissioner
M. Douglas Clow, Vice-Chair

Order

CERTIFIED A TRUE COPY



Philip J. Rafuse,
Appeals Administrator
Island Regulatory & Appeals Commission

IN THE MATTER of an appeal filed under Section 25 of the Rental of Residential Property Act by Craig Myers and Samantha McInnis against Order LD20-081 dated March 5, 2020 issued by the Office of the Director of Residential Rental Property.

Order

BACKGROUND

On March 9, 2020 the Commission received a Notice of Appeal from lessees Craig Myers and Samantha McInnis (the “Appellants”), requesting an appeal of Order LD20-081 dated March 5, 2020 issued by the Director of Residential Rental Property (the “Director”).

The matter was heard by the Director on March 4, 2020 and in Order LD20-081 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 at 2:00 p.m. on March 9, 2020.”*

The hearing was initially scheduled to be heard by the Commission on March 23, 2020 but was postponed due to the closure of the Commission offices due to the COVID-19 pandemic.

The Commission heard the appeal on June 5, 2020 by way of telephone conference in order to meet current social distancing requirements. The Appellant Samantha McInnis (“Ms. McInnis”) participated by telephone. John O’Brien (“Mr. O’Brien”) and Jill Hobb (“Ms. Hobb”) represented the Respondent CAPREIT Limited Partnership (“CAPREIT”).

EVIDENCE

Ms. McInnis testified that she attempted to pay her rental arrears on February 28, 2020 but CAPREIT refused to accept this payment. She testified that she had not received the February 5, 2020 Form 4 Notice of Termination by Lessor of Rental Agreement (“the Form 4”). She testified that she has not paid any further rent and has come to terms with the fact that she will be evicted. She testified that she did not move due to the COVID-19 pandemic.

Mr. O’Brien testified that on February 5 or 6, 2020 he knocked on the door of the Appellants’ apartment. As there was no answer, he taped an envelope containing the Form 4 to the door of said apartment. He testified that he took a picture of the taped envelope (see Exhibit E-7, page 19 of the Commission’s file).

Ms. Hobb testified that the Appellants have known since March 2020 that they would need to move and thus their possessions should be packed.

CAPREIT filed a statement of account dated May 26, 2020 (Exhibit E-13) setting out the then current rental arrears. Mr. O'Brien testified that this arrears further increased with the addition of an additional month's rent effective June 1, 2020.

DECISION

The appeal is denied and Director's Order LD20-081 is confirmed, subject to a variation in the date of possession.

The Commission finds that rent is owing and the arrears were not paid within ten days of service of the Form 4. In addition, the Appellants did not apply to set aside the Form 4. Accordingly, the Appellants are deemed to have accepted the termination of the rental agreement in accordance with section 16 of the ***Rental of Residential Property Act***.

In order to allow the Appellants time to clean and move out of the apartment in an orderly manner, the Commission varies the date of possession to Friday, June 12, 2020 at 2:00 p.m.

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 LD20-081 is confirmed, subject to a variance in the date of possession.**
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 by 2:00 p.m. on Friday, June 12, 2020.**

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 2020.

BY THE COMMISSION:

(sgd.) *Erin T. Mitchell*

Erin T. Mitchell, 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.