



**Docket: LR21021**  
**Order: LR21-21**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Nasrollah Abbasgholipour, against Order LR21-220 issued by the Director of Residential Rental Property and dated June 15, 2021.

**BEFORE THE COMMISSION ON** Wednesday, June 30, 2021.

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

Hearing Date: Tuesday, June 29, 2021

---

# ORDER

Compared and Certified a True  
Copy

(Sgd.) Susan Jefferson  
\_\_\_\_\_  
Commission Administrator  
Corporate Services and Appeals

This appeal asks the Commission to determine whether the Director erred in finding that an eviction notice was not valid.

## BACKGROUND

Nasrollah Abbasgholipour rented premises located at 133 Walker Drive, Summerside, PE, to Tracey Duffenais commencing December 15, 2020. Rent for the premises is \$1,385 per month and is due and payable on the first day of the month.

On April 8, 2021, Mr. Abbasgholipour e-mailed a Notice of Termination by Lessor of Rental Agreement (“Form 4”) to Ms. Duffenais citing failure to pay April 2021 rent and cleanliness of the premises. The effective date of the Form 4 was April 28, 2021.

On June 1, 2021, Mr. Abbasgholipour filed with the Director of Residential Rental Property (the “Director”) an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking an Order for possession of the premises.

In Order LD21-220 dated June 15, 2021, the Director ordered that the Form 4 was invalid, the Form 2 was denied, and that the rental agreement remain in full force and effect.

Mr. Abbasgholipour appealed.

The Commission heard the appeal on June 29, 2021. Mr. Abbasgholipour, his representative Saeed Abbasgholipour, and Ms. Duffenais and her representative, Joey Baglole, participated by way of telephone conference call.

## Disposition

The appeal is denied.

## The Issue

Did the Director correctly determine that the Form 4, dated April 8, 2021, was not served in accordance with the requirements of the *Act* and was therefore invalid?

## Analysis

Subsection 33(1) of the *Act* sets out the requirements of service:

### *33. Service of notices*

*(1) Any notice, process or document to be served by or on a lessor, lessee or the Director or the Commission is sufficiently served if*

*(a) delivered personally; or*

*(b) sent by ordinary, certified or registered mail*

*(i) to the lessor at the address given under section 31,*

*(ii) to the lessee at the address of the premises,*

*(iii) to the Director at the address of his office;*

*(iv) to the Commission at the address of its office.*

Subsection 33(2) of the *Act* sets out the conditions and forms of substituted service:

Substituted service

33(2) Where a notice cannot be delivered personally to a lessee by reason of his absence from the premises or by reason of his evading service, the notice may be served on the lessee

- (a) by serving it on any adult person who apparently resides with the lessee;
- (b) by posting it in a conspicuous place upon some part of the premises or a door leading thereto; or
- (c) by sending it by ordinary, certified or registered mail to the lessee at the address where he resides.

[Emphasis added.]

Mr. Abbasgholipour sent the Form 4 to the Respondent by way of e-mail. He justifies this action on the basis of “*COVID 19 Regulations of limiting interactions between people that are not in your cohorts*”. He further attempts to justify e-mail service on the basis that Ms. Duffenais acknowledged receipt of the Form 4 by e-mail.

While substituted service might be justified by the physical distancing requirements associated with COVID-19, e-mail is not a prescribed form of substituted service under subsection 33(2) of the *Act*. Clauses 33(2)(b) and (c) are reasonable forms of substituted service which would not offend COVID-19 physical distancing requirements.

The Commission agrees with the findings of the Director that the Form 4 was not served in accordance with the requirements of the *Act* and is therefore invalid.

Accordingly, the appeal is denied.

**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 LD21-220 is confirmed.**

**DATED** at Charlottetown, Prince Edward Island, Wednesday, June 30, 2021.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

\_\_\_\_\_  
Panel Chair - Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

\_\_\_\_\_  
M. Douglas Clow, Vice-Chair

**NOTICE**

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides 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.