



**Docket: LR220015**  
**Order: LR22-16**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Kaitlynn Corey, against Orders LD22-047 and LD22-048 issued by the Director of Residential Rental Property, both dated February 25, 2022.

**BEFORE THE COMMISSION ON** Tuesday, March 29, 2022.

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

Hearing Date: Wednesday, March 23, 2022

---

# 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 of Residential Rental Property (the “Director”) erred in finding that an eviction notice was valid and finding that a tenant owes rent to a landlord.

## **BACKGROUND**

Kaitlynn Corey (“Ms. Corey”) rents a room in a single-family home located at 61 Village Green Road, Mt. Mellick, PE (the “Premises”), from Bosheng Li (“Mr. Li”) commencing September 3, 2021. Rent for the Premises is \$800 per month plus a portion of the utilities bill and is due and payable on the first day of the month.

On January 10, 2022, Mr. Li served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) to Ms. Corey for non-payment of rent in the amount of \$1,039. The effective date of the Form 4 was January 30, 2022.

On January 27, 2022, Mr. Li filed with the Director an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) requesting an order terminating the rental agreement because Ms. Corey is persistently and/or habitually late with payment of rent.

On February 2, 2022, Mr. Li filed another Form 2 seeking: an order that rent is owed; an order that an amount found to be owed be paid; and an order that possession of the residential premises be surrendered to the lessor and directing the Sheriff to put the lessor in possession of the Premises.

In Order LD22-047, dated February 25, 2022, the Director found that the Form 4 was valid, and ordered that the rental agreement be terminated effective March 4, 2022 at 5:00 p.m.

In Order LD22-048, dated February 25, 2022, the Director found that the second Form 4 was also valid and ordered Ms. Corey to pay Mr. Li \$1,014.80 on or before March 25, 2022.

Ms. Corey appealed both Orders.

The Commission heard the appeal by way of telephone conference call on March 23, 2022. Ms. Corey participated and called Brooke Doyle as a witness. Ms. Corey was also assisted by Connor Kelly (“Mr. Kelly”) of the PEI Fight for Affordable Housing. Mr. Li also participated along with Yan Ming, who provided some translation assistance.

## **Disposition**

The appeal is dismissed and Director’s Orders LD22-047 and LD22-048 are confirmed.

## **The Issue**

Did the Director correctly determine that the Form 4 and Form 2 were valid?

## Analysis

Mr. Kelly submitted on behalf of Ms. Corey that there were defects in service of the various Form 4s. Ms. Corey testified that the January 10, 2022, Form 4 was not served by Mr. Li or his agent, but by another person who left it under a shoe-rack in the laundry room. Ms. Corey noted that her rent up to and including January 2022 was up-to-date by early February. She stated that she switched from payment by e-transfer to payment by cheque and put payment for February and March 2022 in the community mailbox shared by Mr. Li, herself and the other tenants. Ms. Corey also stated that she believed she did not have to pay February and March rent until March 25, 2022.

Mr. Li testified that that he gave the January 10, 2022, Form 4 to another tenant to serve on Ms. Corey. Mr. Li testified that he has not received any payment of rent for February or March 2022, and stated that when last he checked, there were no cheques from Ms. Corey in the shared mailbox.

Ms. Corey's case, as presented by Mr. Kelly, appears to be premised on the false notion that defects in service alone nullify Mr. Li's application to terminate the rental agreement. In this regard, Mr. Kelly is mistaken.

Defects in service are always concerning to the Commission. However, a service defect alone does not nullify a Form 4 or a Form 2 or any other Notice. Section 9 of the Commission Rules of Practice and Procedure explicitly states that "[n]o proceeding before the Commission shall be defeated or affected solely by any technical objection or by any objection based upon defects in form or procedure". Instead, the Commission examines the impact of the defect in service. Did the defect in service actually cause any harm or prejudice to the intended recipient of the Notice?

In the present case, the evidence establishes that Ms. Corey did receive all of the Form 4s and the February 2, 2022 Form 2. The defects in service did not impair her right to challenge the application before the Director, nor did the defects in service deny her a right of appeal to the Commission. Even though the January 10, 2022, Form 4 was served in an improper fashion, Ms. Corey testified that she was aware of someone entering the laundry room, investigated and discovered the Form 4 under the shoe-rack. She was present at the hearing before the Director. Other Form 4s were merely stuck in the door rather than securely taped to the door, but she provided evidence that she nevertheless did still receive them.

Further, the Commission notes that Canadian courts have recognized that a failure to provide procedural fairness can be cured by providing a subsequent opportunity to be heard (see *McNamara v. Ontario (Racing Commission)*, 1998 CanLII 7144 (ON CA)). Appeals to the Commission are by way of re-hearing (per section 26 of the *Act*). At the hearing of this appeal Ms. Corey had opportunity to present her full case; any prejudice that may have occurred by virtue of imperfect service was certainly remedied at the hearing of the appeal.

Ms. Corey also attempted to establish that her past tardiness in paying rent was due to a lack of income and that this situation was now resolved. Unfortunately, her efforts to convince the Commission that she had turned over a new leaf rang hollow given that February and March rent remain unpaid. The Commission accepts Mr. Li's evidence that he did not find cheques from Ms. Corey in the shared mailbox, nor was he told that Ms.

Corey had changed her method of payment. If Ms. Corey wished to change the method of payment, the onus was on her to ensure that this change was acceptable to Mr. Li and that either Mr. Li, or his designated agent, directly received the rent cheques.

Accordingly, the Commission agrees with the findings of the Director, dismisses the appeal and confirms Orders LD22-047 and LD22-048.

**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 dismissed.
2. Director's Orders LD22-047 and LD22-048 are confirmed.

**DATED** at Charlottetown, Prince Edward Island, this 29<sup>th</sup> day of March, 2022.

**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.