



**Docket: LR22055**

**Order: LR22-53**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Patrick Woods against Order LD22-263 issued by the Director of Residential Rental Property and dated July 28, 2022.

**BEFORE THE COMMISSION ON** Tuesday, September 20, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Monday, September 12, 2022

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# ORDER

Compared and Certified a True  
Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

This appeal asks the question of whether the Director of Residential Rental Property (the “Director”) erred in terminating a rental agreement due to the persistent and habitual late payment of rent by a tenant.

## **Background**

Patrick Woods (“Mr. Woods”) entered into a written, fixed term rental agreement for Apartment #7, 78 Main Street, Cornwall, PE (the “Premises”) with 102383 PEI Inc. (the “Landlord”) on October 16, 2021. Rent is \$990.00 per month and due and payable on the 1<sup>st</sup> day of the month. A security deposit of \$990.00 was required and paid.

On July 12, 2022, the Landlord filed with the Director an application requesting an order terminating the rental agreement alleging Mr. Woods is persistently and habitually late paying rent (the “Application”). Included with the Application were a series of Notices of Termination (“Form 4s”) directed to Mr. Woods and signed by a representative of the Landlord.

In Order LD22-263 dated July 28 2022, the Director ordered that Mr. Woods must vacate the Premises by 11:59 p.m. on August 31, 2022.

Mr. Woods appealed.

The appeal was heard on September 12, 2022, by way of telephone conference call. Mr. Woods appeared on his own behalf. The Landlord was represented by Edwin Wen and Snow Huang.

## **Disposition**

The appeal is denied and Director’s Order LD22-263 is confirmed, subject to a variation in the termination date to 11:59 p.m. on October 31, 2022.

## **The Issue**

Did the Director correctly determine that the Application was valid?

## **Analysis**

Mr. Woods testified that the earlier Form 4s were not properly served and he had no knowledge of them at the material times. He stated that they had not been sent to his email address and instead had been sent to an email address slightly different than his father’s email address. Accordingly, he stated did not receive the emailed Form 4s. The most recent Form 4 was taped to his door, was properly served and he did receive that Form 4 Notice of Termination.

With respect to the text messages sent to him in the spring of 2022 mentioned that his rent was not paid, Mr. Woods stated that his phone was not working during that period.

Mr. Woods stated that he is up to date on his rent and both August and September 2022 rent were paid on the first of the month.

The Landlord's representatives submitted that there is a pattern of late rent payments establishing that Mr. Woods has been persistently or habitually late. The Landlord's representatives submitted into evidence a table that listed Mr. Woods' rent payments by date and amount over the course of his tenancy. The table established that Mr. Woods had been late in his rent payments numerous times. Mr. Woods agreed that the table was accurate.

The Commission is sympathetic to Mr. Woods as he is now up to date in his rent payments and has started on a path of paying his rent on time. In addition, he had no timely notice of the Form 4s dated March 8, April 8, and May 2, 2022.

That said, Mr. Woods ought to have been aware he was paying his rent late and admitted this point. The fact that he did not receive the text messages from the Landlord was not due to any error or omission by the Landlord.

Mr. Woods did not file a Form 6 application to set aside the July 2, 2022 Form 4. The requirement to file a set aside application and the deadlines and procedure is set out in section 16 of the Act. By not filing the Form 6 set aside application, he is deemed to have agreed with the provisions of the July 2, 2022 Form 4 given that he did not pay the outstanding rent within 10 days of receiving the July 2, 2022 Form 4.

Accordingly, the Commission agrees with the finding of the Director that the rental agreement must be terminated on the basis of Mr. Woods being persistently or habitually late.

Given the defects in services of the earlier Form 4s as well as Mr. Woods having paid his rent on time for the months of August and September 2022, the Commission extends the termination date to October 31, 2022 at 11:59 p.m., conditional on the October 2022 rent being paid on October 1, 2022.

**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 and Director's Order LD22-263 is confirmed, subject to a variance in the date Mr. Woods must vacate the Premises.
2. **Conditional** on the rent for October 2022 being **received in full** on October 1, 2022, Mr. Woods must vacate the Premises on October 31, 2022 at 11:59 p.m.

3. In the event that October's rent has not been received in full on October 1, 2022, Mr. Woods must **immediately** vacate the Premises.
4. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services.

**DATED** at Charlottetown, Prince Edward Island, Tuesday, September 20, 2022.

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell,  
Commissioner

(sgd. M. Douglas Clow)

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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.