



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: June 5, 2024

Docket: LR24027

Type: Rental Appeal

INDEXED AS: *Sohasky and Maxwell v. Craig and Arthur*

Order No: LR24-32

BETWEEN:

Veronica Sohasky and Justin Maxwell (the "Tenants")

Appellants

AND:

Vicki Craig and Greg Arthur (the "Landlords")

Respondents

ORDER

Panel Members:

Kerri Carpenter, Commissioner
M. Douglas Clow, Acting Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

A. INTRODUCTION

1. The Tenants appealed a decision of the Residential Tenancy Office (the “Rental Office”), Order LD24-116, which found that the Tenants were not entitled to a return of rent.
2. In response, the Landlords raised a preliminary issue, arguing that the Notice of Appeal was not properly served and filed in accordance with the provisions of the *Residential Tenancy Act* (the “Preliminary Issue”).
3. This Preliminary Issue was heard by the Commission on May 28, 2024. Upon reviewing the written submissions of the parties and hearing their testimony and oral submissions at the hearing, the Commission orally delivered its disposition at the conclusion of the hearing, finding that the appeal is dismissed, with written reasons to follow. These are the reasons for that decision.

B. BACKGROUND

4. This appeal concerns a residential property located at 1 Bay Drive, Cornwall, PE (the “Rental Unit”).
5. On April 5, 2024, the Rental Office issued Order LD24-116, finding that the Tenants failed to establish their claim that the Landlords contravened their rights under the *Residential Tenancy Act* and, therefore, denied their claim for a return of rent.
6. On April 24, 2024, at around 9:30pm, the Tenants emailed a Notice of Appeal to the Commission. It was received by the Commission effective April 25, 2024.
7. The Tenants emailed a copy of the Notice of Appeal to the Landlords four days later, on April 29, 2024.
8. The matter was ultimately set down to be heard on May 28, 2024.
9. Prior to the hearing of the appeal, the Landlords, via their counsel, raised the Preliminary Issue with the Commission. The Tenants provided brief submissions in response. On May 27, 2024, Commission Staff advised the parties that the next day’s hearing would deal solely with the Preliminary Issue, and any hearing on the merits that may result would be set down for a later date.
10. The Preliminary Issue was heard by the Commission on May 28, 2024, via telephone conference call. The Tenants were present and represented themselves. The Landlords were also present, represented by their Counsel, Shea Callaghan.

C. DISPOSITION

11. The appeal is dismissed. The Notice of Appeal was not served on the Landlords within the statutory appeal period prescribed by the *Residential Tenancy Act*¹ and, therefore, the Commission does not have jurisdiction to hear the appeal.

¹ RSPEI 1988, R-13.11.

D. ANALYSIS

12. The facts surrounding the Preliminary Issue are simple and not in dispute.
13. First, it was not disputed that the parties received Order LD24-116 from the Rental Office on April 5, 2024.
14. The Notice of Appeal was filed with the Commission effective April 25, 2024. However, the Landlords' testimony confirmed that they did not receive a copy of the Notice of Appeal until Monday, April 29, 2024. The Tenants' testimony was consistent with this, confirming that they did not send the Notice of Appeal to the Landlords until April 29, 2024.
15. The *Residential Tenancy Act* states:²

Commission to receive notice

- (3) An appeal under subsection (1) shall be made by serving a notice of appeal, in the approved form, on the Commission and every party to the Director's order.

Timing of notice

- (4) A notice of appeal shall be served on the Commission and other persons referred to in subsection (3) within 20 days after a copy of the Director's order is provided to the person commencing the appeal.

16. The use of the word "shall" is to be construed as imperative.³ The Commission interprets these subsections, therefore, to mean that service **must** be effected on both the Commission **and** every party to the Rental Office order within the prescribed appeal period in order for an appeal to be properly made.
17. In this case, Order LD24-116 was provided to the Tenants on April 5, 2024. The 20-day statutory appeal period expired on April 25, 2024 (being 20 calendar days after the Order was provided).⁴ The Tenants concede that they did not serve the Notice of Appeal on the Landlords until April 29, 2024, being 24 days after the Order was provided.
18. The Commission is a statutory body and only has the authority expressly conferred upon it by the Legislature. We are without jurisdiction to waive or suspend the application of the provisions of the *Residential Tenancy Act* that stipulate an imperative time limitation for filing an appeal. For these reasons, we must dismiss this appeal.

² Note: s. 89(5) includes a separate appeal timeline of seven (7) days for orders directing a tenant to vacate.

³ *Interpretation Act*, RSPEI 1988, I-8.1, Schedule, s. 1(hhh). ["*Interpretation Act*"]

⁴ *Interpretation Act*, s. 33(3).

E. CONCLUSION

19. The appeal is dismissed on the basis that the Notice of Appeal was not served on the Landlords within the statutory appeal period prescribed by the *Residential Tenancy Act*.

20. We note that as only the Preliminary Issue was heard, this Order makes no disposition with respect to the merits of the appeal.

IT IS ORDERED THAT

1. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, 5th day of June, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)
M. Douglas Clow, Acting Chair

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.