



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket: LR20028
Order: LR20-31

IN THE MATTER of an appeal, under Section 25 of the Rental of Residential Property Act ("the Act"), by 11340000 Canada Ltd., against Order LD20-209 issued by the Director of Residential Rental Property and dated August 12, 2020.

BEFORE THE COMMISSION ON Thursday, October 15, 2020.

Panel Chair - Erin T. Mitchell, Commissioner
Jean Tingley, Commissioner

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

ORDER

Background

1. On July 3, 2020, a tenant named Ze Dai (the “Respondent”) filed with the Office of the Director of Residential Rental Property (the “Director”) an application in respect of a rental agreement for the premises located at 12F Browns Court in Charlottetown, PEI (the “Premises”). The Respondent sought an order for: a finding that rent is owed; a finding that the security deposit should be returned; an order that an amount found to be owed be paid and an order to repair the heating system, four windows and clean up bugs in the Premises.
2. The matter was heard by the Director on July 31, 2020. In Order LD20-209 the Director ordered as follows:
 1. The lessor shall pay to the lessee the sum of **\$6,376.95** on or before **September 15, 2020**.
 2. The lessor shall correct the following deficiencies in order to be in compliance with Section 6.12 of the **Act** and Section 9. of the **Regulations**. The work to the premises shall be completed as set out below:
 - a. Repair the four windows by **August 26, 2020**;
 - b. Repair the heating system by **September 4, 2020**; and
 - c. Repair the bug infestation **immediately** by retaining a **licensed extermination company**.
 3. Effective July 5, 2020 the rent for the premises is reduced to zero dollars (\$0.00). The rent for the premises shall not be increased until the lessor completes the window and heating system repairs **and** the bugs at the premises have been substantially remediated as set out in Paragraph 2 **and** the lessor has obtained an order from the Rental Office allowing the rent increase.”
3. On August 31, 2020 the Commission received a Notice of Appeal from a landlord 1340000 Canada Ltd. (the “Appellant”). On September 1, 2020, the Appellant filed an Amended Notice of Appeal.
4. The matter was heard by the Commission on October 1, 2020 by way of telephone conference call. Yunzhen (Wayne) Wei appeared for the Appellant, and was represented by legal counsel, Lucas MacArthur. The Respondent participated and was represented by legal counsel, Erin Devine.
5. Appeals to the Commission under the **Act** are re-hearings, as stated in section 26(2). As such, the Commission considered the evidence that was before the Director, as well as the materials filed and submissions made by the Appellant and Respondent on appeal.

The Appellant's Position

6. The Appellant, through his counsel, first argued that the Director had failed to consider the fact that the Respondent had allegedly been served with a Notice of Termination ("Form 4") by the Appellant, and as such, the subsequent application by the Respondent was improperly before the Director. He argued that the Respondent should have filed an Application to Set Aside the Form 4, and because he didn't, he was deemed to have accepted the termination of the rental agreement. At a minimum, counsel argued, the impact of the Form 4 should have been considered at the same time as the current application.
7. Secondly, the Appellant argued that the Director decided the current application without having ordered or conducting a home inspection, which, he submitted, constituted a marked departure from normal practice. The Appellant argued that the fact that the Respondent's allegations regarding the condition of the Premises were not verified by either the Director, or a third party at the behest of the Director, should invalidate the Director's order.

Decision

8. The appeal is denied and Director's Order LD20-209 is confirmed.

Analysis

The Form 4

9. There is a dispute between the parties as to whether the Form 4 was ever served.
10. Counsel for the Appellant submitted that his client's agent attempted to serve the Form 4 on the Respondent on June 30th, 2020. According to the Appellant, the Respondent was not present and his wife refused to accept it. The Appellant stated that the following day, July 1, 2020, the Respondent was home and took a photograph of the Form 4, but did not accept the paper copy. The Appellant stated the Form 4 was also posted on WeChat on July 2, 2020.
11. Counsel for the Respondent submitted that her client and his family were away from home from June 29 to July 1, 2020, and not home to accept service at the time the Appellant alleged his agent had attempted to serve the document. She submitted that the Form 4 was not served on her client, and the Director was correct to not rule on the Form 4 as it was simply not served.
12. There is no evidence, beyond the assertion of the Appellant, that the Form 4 was ever served. The screenshot from WeChat provided by the Appellant does not establish that service was effected, and does not, in any event, constitute substituted service as defined in section 33(2) of the *Act*.
13. The onus rests on the Appellant to establish that service has occurred, and the Commission does not find that the Appellant has met that onus. As such, the Commission finds that the Director properly considered the current application.

Inspection of the Premises

14. Counsel for the Appellant submitted that the Director should not have ordered a return of rent without first having conducted an inspection of the premises. He submitted that the pictures did not reveal that the windows were broken and there was no evidence to support a finding that the bugs were present due to any act or omission by the Appellant. Counsel for the Appellant maintained that the bugs were brought into the premises with the Respondent's furniture. When pictures were taken of the windows in September 2020, the Appellant submitted they worked properly.
15. Counsel for the Respondent submitted that the Respondent is not opposed to a home inspection, but noted that this did not invalidate her client's position that the Director's Order should be upheld. Further, she stated that it would be beneficial to have a third party do an inspection of the Premises to ensure that the issues that were described in the Director's Order were addressed before her client and his family returned to the Premises.
16. The Commission finds that the Director was not obligated to inspect the Premises. The Director's Order noted that it had suspended performing inspections due to the COVID-19 pandemic. Section 4(2)(e) of the *Act* gives the Director authority to conduct such inspections, but does not mandate that they must be done in every case.
17. Notwithstanding this suspension, the record is clear that the Respondent had communicated complaints about windows, heating issues and bugs over a considerable time period, commencing in the late fall of 2019 and continuing until the time that the Respondent filed his application.
18. The response of the Appellant's representative contained in the record included references to being "too busy" and being unable to respond due to the COVID-19 pandemic. The references to the COVID-19 pandemic made throughout February 2020 are suspect as there were no cases of COVID-19 on Prince Edward Island prior to March 2020 and the "lockdown" did not commence until mid-March 2020. The Commission finds that the Appellant had ample opportunity to investigate and rectify the deficiencies but refused to do so.
19. Upon being questioned by the Commission as to whether the Appellant's position was that there was never anything wrong with the premises, i.e., that the heating system had always worked and the windows never broken, counsel for the Appellant responded in the affirmative. The evidentiary record, showing the numerous times the Respondent contacted the Appellant to ask that the issues be addressed, makes this position simply not credible.
20. The evidence at the original hearing satisfied the Director that the deficiencies existed, and the Commission finds nothing in either the record or the further evidence and submissions of the Appellant to disturb this finding. There was ample evidence before the Director that established the condition of the Premises was problematic.

Conclusion

21. The Commission agrees with the findings and outcome of Director's Order LD20-209. The Respondent had pre-paid rent for the Premises which did not meet basic living standards: lack of heat and insects biting the occupants. A return of

rent and a reduction of rent to \$0.00 per month until the deficiencies were rectified were appropriate in these circumstances.

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 LD20-209 is confirmed.**

DATED at Charlottetown, Prince Edward Island, **Thursday, October 15, 2020.**

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell, Commissioner

(sgd. Jean Tingley)

Jean Tingley, Commissioner

NOTICE

Sections 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.