



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20038
Order LR20-37**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Shernaria Morris against Order LD20-278 dated October 9, 2020, issued by the Director of Residential Property.

BEFORE THE COMMISSION

on Friday, the 20th day of November, 2020.

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

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Shernaria Morris against Order LD20-278 dated October 9, 2020, issued by the Director of Residential Property.

Order

This appeal asks the question of whether outstanding rent due to a landlord may be reduced, and if so, by how much, where a tenant's personal property, held by the landlord, was damaged.

Background

The Appellant, Shernaria Morris ("Ms. Morris"), rented an apartment from the Respondent, Richard Keleher ("Mr. Keleher"), located at 69 Lilac Avenue, Charlottetown, PEI (the "Premises"). Ms. Morris moved in on September 11, 2019, and rent was due on the first day of each month.

On August 7, 2020, Mr. Keleher emailed to Ms. Morris a Notice of Intention to Retain Security Deposit ("Form 8") which stated that Mr. Keleher would be retaining the entire security deposit of \$1,060.40 for rent owing. On August 31, 2020, Ms. Morris filed with the Director of Residential Rental Property (the "Director") a Form 2 – Application for Enforcement of Statutory or Other Condition of Rental Agreement ("Form 2").

At the hearing before the Director, Ms. Morris testified that her television and accompanying cables (the "Television") were not among her personal belongings returned to her and Mr. Keleher testified that he seized the Television for distress of back rent.

The Director heard the matter on October 9, 2020, and in Order LD20-278 ordered Ms. Morris pay Mr. Keleher the sum of \$1,789.60 for rent owing and Mr. Keleher was to return Ms. Morris's Television to her immediately.

Ms. Morris appealed.

The Commission heard the appeal on November 16, 2020. The parties participated by way of telephone conference call.

Disposition

The appeal is denied. Director's Order LD20-278 is varied to provide for rent owing in the amount of \$1,189.60, reflecting a reduction of \$600 for the agreed value of the loss of the television.

The Issues

The Commission will consider the following questions in determining this appeal:

1. Can outstanding rent be reduced where a tenant's property was damaged?
2. How much can the outstanding rent be reduced?

Can outstanding rent be reduced where a tenant's property was damaged?

The Respondent wrongfully seized the Appellant's television for distress of back rent. The Director in Order LD20-278 ordered that the Respondent return the television to the Appellant and the Respondent did return the television. The Appellant discovered that the television had a cracked screen. Both parties agree that the television was worth \$600 including taxes and fees. Both parties accept that the television is a total loss.

In Director's Order LD20-278 the Director stated in part:

[10] If the Television is in a damaged or un-working state at the time the Tenant takes possession of the Television then the Tenant may make further application to the Rental Office seeking a monetary claim against the Landlord.

There is no evidence before the Commission that the Appellant [Tenant] made a further application to the Director.

In the Appellant's Notice of Appeal form, the following reasons for appeal were stated:

The reason for this appeal is because in the last hearing that took place October 9, 2020 my television was ordered to be returned to me immediately, I also agreed to pay \$50.00 to the landlord. Due to not having my TV because it was totally destroyed I should not have to pay any money going forward as it was taken in place of the money.

In filing the appeal, the Appellant has sought to reduce the rent owing as her television was destroyed. The Respondent has agreed to reduce the rent owing by the full value of the television.

Given the consent of the parties, the Commission finds that the rent owing may be reduced.

How much can the outstanding rent be reduced?

Based on her Notice of Appeal, the Appellant appears to seek the elimination of her entire rental arrears of \$1,789.60 because of the destruction of her television. The Respondent has expressed a willingness to reduce the rental arrears by \$600, representing the value of the television as identified by the Appellant.

The Commission does not have the jurisdiction to make a financial award including claims based on distress, hardship or punitive damages. Accordingly, the reduction in outstanding rent is limited to the agreed value of the television and thus the Commission reduces the rental arrears to \$1,189.60.

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. Given that the Appellant's television is considered a total loss with an agreed value of \$600, Director's Order LD20-278 is varied to reduce the rental arrears of \$1,789.60 to \$1,189.60.

DATED at Charlottetown, Prince Edward Island, this 20th day of November, 2020.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. Jean Tingley)

Jean Tingley, Commissioner

NOTICE

Subsections 26(2) to 26(5) of the *Rental of Residential Property Act* provide 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.