



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20039
Order LR20-38**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Christopher Higgins against Order LD20-289 dated October 21, 2020, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 18th day of December, 2020.

Erin T. Mitchell, Panel Chair & Commissioner
M. Douglas Clow, Vice-Chair
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 Christopher Higgins against Order LD20-289 dated October 21, 2020, issued by the Director of Residential Rental Property.

Order

This appeal asks the question of whether a landlord is permitted to retain all, or a portion, of the tenants' security deposit.

Background

The Appellant, Christopher Higgins ("Mr. Higgins"), rented a room to the Respondents, Mehakjot Kaur ("Ms. Kaur") and Ripanjot Singh ("Mr. Singh"), collectively (the "Tenants") located at 3 MacArthur Drive, Charlottetown, PE (the "Premises"). The Tenants moved into the Premises in September 2020. A security deposit of \$700 was paid to Mr. Higgins.

On September 30, 2020, Mr. Higgins gave the Tenants a Notice of Intention to Retain Security Deposit ("Form 8"), which stated that Mr. Higgins would be retaining a part of the security deposit in the amount of \$350 for cleaning of the Premises. On October 4, 2020, the Tenants filed with the Director of Residential Rental Property (the "Director") a Form 9 – Application re Determination of Security Deposit dated October 4, 2020.

The Director heard the matter on October 20, 2020, and in Order LD20-289 ordered Mr. Higgins pay the Tenants the sum of \$350 on or before November 23, 2020.

Mr. Higgins appealed.

The Commission heard the appeal commencing on November 25, 2020, by way of telephone conference call with the parties. The hearing was recessed that day to allow the participation of a witness for Mr. Higgins. The hearing resumed by telephone conference call on November 30, 2020, and concluded that same day.

Disposition

The appeal is denied. Director's Order LD20-289 is confirmed.

Analysis

The evidence establishes that the Tenants rented a room with kitchen and bathroom privileges in the Premises, which were also occupied by another tenant, Mr. Higgins and Mr. Higgins's spouse. The Tenants only lived in the Premises for 10 or 11 days during the month of September 2020.

The basis of Mr. Higgins's claim of \$350, which he sought to retain from the security deposit, was that he incurred expenses to clean after the Tenants moved out of the Premises. Mr. Higgins claimed that he booked ServiceMaster to clean the floors, but they had not yet come in to do the work due to COVID-19. Mr. Higgins also claimed that he hired F.M. to clean the Premises after the Tenants left. Mr. Higgins stated that F.M. did clean the Premises, was paid \$200 and issued a receipt for that amount.

Mr. Higgins also complained that the Tenants failed to clean up after preparing their meals. He stated that he had to clean the kitchen on three occasions at more than one hour each occasion. He stated that this cleaning included the kitchen counter, stove top, walls, oven, sink area, and microwave. He also stated that the Tenants came into the Premises with their footwear on and tracked dirt on the new flooring.

Mr. Singh told the Commission that the Tenants were asked by Mr. Higgins to leave the premises in September 2020. Mr. Singh testified that the Tenants' possessions were placed on the driveway.

Mr. Singh testified that the advertisement did not mention that the property owner would also be living at the Premises. The advertisement also did not mention that there was a dog residing at the Premises. Mr. Singh testified that this was an important matter to the Tenants, as Ms. Kaur is afraid of dogs.

At the hearing on November 25, 2020, the Commission Panel questioned Mr. Higgins on the receipt purportedly prepared and signed by F.M. The receipt did not itemize the cost of the items listed therein, but rather was for a flat \$200. No taxes appear to have been collected according to the receipt. The Commission Panel therefore sought to hear from F.M. on the detail of the services allegedly provided and the associated charges.

Mr. Higgins told the Commission Panel that he would provide Commission staff with contact information for F.M. On this basis, the Commission Panel recessed the hearing, and, following receipt of contact information for F.M., Commission staff provided F.M. with conference call instructions and the date and time of the hearing.

The Commission reconvened the hearing on November 30, 2020. Mr. Higgins stated that F.M. had other work and could not take the time to be on the call for the hearing. Mr. Higgins also stated that ServiceMaster was hoping to clean the floors on Friday (December 4, 2020).

With respect to Mr. Higgins's claim for ServiceMaster to clean the floors, the Commission observes that the Tenants left the premises in September 2020 and yet, as of November 30, 2020, that work had not been done; with only a statement from Mr. Higgins that ServiceMaster was "hoping" to clean the floors on December 4, 2020. As the work to clean the floors had not been accomplished after some two months, the Commission rejects such claim.

With respect to the claim for \$200 allegedly paid by Mr. Higgins to F.M. for cleaning services, the Commission has concerns about the veracity of this claim. In order to give any evidentiary weight to this “receipt”, the Commission needed to have the opportunity to ask questions of the person who purportedly issued and signed the receipt. The Commission adjourned the hearing on November 25, 2020, to allow F.M. to testify by way of a telephone conference call. As F.M. was not produced as a witness when the hearing resumed on November 30, 2020, the Commission gives no evidentiary weight to this “receipt” and thus Mr. Higgins’s claim for \$200 paid to F.M. fails.

Accordingly, the Commission rejects Mr. Higgins’s total claim for \$350 and confirms the decision of the Director in Order LD20-289. The balance of the security deposit is owed to the Tenants and it shall be paid forthwith upon the expiry of the appeal period.

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 LD20-289 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **18th** day of **December**, **2020**.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Jean Tingley)

Jean Tingley, Commissioner

NOTICE

Subsections 26(2), 26(3), 26(4) and 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.