



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR20044
Order LR21-01**

IN THE MATTER of an appeal under
Section 25 of the Rental of Residential
Property Act filed by Aleksandr Khinchuk
against Order LD20-320 dated November 12,
2020 issued by the
Director of Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 5th day of January, 2021.

Erin T. Mitchell, Panel Chair & Commissioner
M. Douglas Clow, Vice-Chair

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under Section 25 of the Rental of Residential Property Act filed by Aleksandr Khinchuk against Order LD20-320 dated November 12, 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 a tenant's security deposit.

BACKGROUND

The Appellant, Aleksandr Khinchuk ("Mr. Khinchuk"), entered into a rental agreement with the Respondent, Angela MacCallum ("Ms. MacCallum") for a room at 62 Lilac Avenue, Charlottetown, PEI (the "Premises"). Mr. Khinchuk moved into the Premises in May, 2019. A security deposit of \$500.00 was paid to Ms. MacCallum.

On September 10, 2019 Ms. MacCallum served Mr. Khinchuk a Notice of Intention to Retain Security Deposit ("Form 8") which indicated that Ms. MacCallum would be retaining all of the security deposit for unpaid rent for the month of August, 2019. On October 1, 2019, Mr. Khinchuk filed with the Director of Residential Rental Property (the "Director") a Form 9 – Application re Determination of Security Deposit dated October 1, 2019.

The Director heard the matter on November 10, 2020, and in Order LD20-320 ordered that Ms. MacCallum receive the security deposit in the amount of \$500.00 and Mr. Khinchuk receive the accrued interest on the security deposit in the amount of \$1.25.

Mr. Khinchuk appealed.

The Commission heard the appeal on January 5, 2021. Mr. Khinchuk participated by way of telephone conference call. Ms. MacCallum did not participate in the hearing. The efforts to contact Ms. MacCallum by email and provide her with options for participation were placed on the oral record of the hearing.

DECISION

The appeal is denied. The Commission confirms Order LD20-320.

ANALYSIS

It is undisputed between the parties that they entered into a rental agreement for the Premises. The rental agreement began in May, 2019, but there is a dispute as to its intended duration.

Mr. Khinchuk alleges that he advised Ms. MacCallum prior to entering into the rental agreement that he only needed the Premises until the “beginning of August”. He stated that Ms. MacCallum did not provide him with a written copy of the rental agreement, and that the terms to which he agreed originally did not oblige him to pay for the entire month of August 2019.

The Commission finds, based on the evidence before it, that there was no written rental agreement between the parties. This does not mean that the provisions of the *Rental of Residential Property Act* (“the Act”) do not apply to the rental agreement. Section 9(3) of the Act states:

9.(3) A lessor and lessee who have an oral rental agreement and do not sign a standard form are deemed to have done so and all the provisions of this Act and the standard form apply.

Section 11 of the Act sets out the requirements for a lessee to terminate a rental agreement:

NOTICE BY LESSEE

11. Notice of termination

(1) A lessee may terminate a rental agreement by serving on the lessor a notice of termination which complies with section 18.

Service of notice by lessee

(2) Where premises are let under a fixed term rental agreement,
(a) a notice of termination shall be served by the lessee not less than sixty days before the expiry of the term; and
(b) service pursuant to clause (a), terminates the rental agreement as of the last day of the term.

Idem

(2.1) Where premises are let by rental agreement from month to month or week to week,
(a) a notice of termination shall be served by the lessee on or before the due date for the payment of rent; and
(b) service pursuant to clause (a) terminates the rental agreement on the day preceding the day that would otherwise be the next rental payment due date following the date referred to in clause (a).

Agreements deemed to be monthly

(3) For the purposes of subsection (2), where the premises are let for periods that are greater than a week and less than a month, they shall be deemed to be let from month to month.

1988,c.58,s.11; 1998,c.6,s.1.

Section 18 of the *Act* sets out the kind of notice required to terminate the rental agreement:

18. *Form of notice*

(1) *A lessor and lessee shall give notice to terminate in writing in the form prescribed by regulation.*

Content of notice

(2) *A notice to terminate*

(a) *shall be signed by the person giving the notice, or his agent;*

(b) *shall identify the premises in respect of which the notice is given;*

(c) *shall state the date on which the notice is to be effective; and*

(d) *where notice is given by the lessor, shall state the reasons for the termination.* 1988, c. 58, s. 18.

Mr. Khinchuk advised Ms. MacCallum orally in May 2019 that he would be leaving the premises in August 2019. He did not provide her with an exact date and he did not move out until August 9, 2019.

Whether a rental agreement is written or oral, written notice is required to terminate a rental agreement. Mr. Khinchuk did not provide Ms. MacCallum with written notice as required by sections 11 and 18 of the *Act*. As a result, the rental agreement did not end until August 31, 2019 and Ms. MacCallum was justified in retaining the security deposit for rent for the month of August 2019.

Accordingly, the Commission rejects Mr. Khinchuk's claim for a return of the security deposit and confirms the decision of the Director in Order LD20-320.

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 LD20-320 is confirmed.**

DATED at Charlottetown, Prince Edward Island, this **5th** day of **January**, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Sections 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.