



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21015
Order LR21-11**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the Rental of *Residential Property Act* filed by Lisa Catania (aka Lisa-Lila Catania) against Orders LD21-124 and LD21-125 both dated April 8, 2021, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION
on Tuesday, the 20th day of April, 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 subsections 25(2) and 26(1) of the Rental of Residential Property Act filed by Lisa Catania (aka Lisa-Lila Catania) against Orders LD21-124 and LD21-125 both dated April 8, 2021, issued by the Director of Residential Rental Property.

Order

This appeal asks whether a Lessee owes rent to a Lessor and whether a Notice of Termination by Lessor of Rental Agreement is valid.

Background

The Appellant lessee, Lisa Catania, aka Lisa-Lila Catania (the “Appellant”) and the lessors, Greg Russell and Susan Cox-Russell (together the “Respondents”) entered into a written, fixed-term Rental Agreement for 20 Heron View Drive, in Brackley Beach, PE (the “Premises”) for the period of December 1, 2020 to May 31, 2021. Rent in the amount of \$1,600 was due on the first day of each month, along with a \$1,600 security deposit. The Rental Agreement contained a clause that the Appellant would be responsible for “[t]he amount by which the combined monthly electricity and propane usage exceeds \$300.”

Order LD21-214

On March 23, 2021, the Respondents filed with the Director of Residential Rental Property (the “Director”) a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) seeking a finding that rent is owed and an order that an amount found to be owed be paid. The Respondents alleged that the Appellant owed rent for the month of March 2021, as well as for heating costs for the months of December 2020 to March 2021, inclusive.

The matter was heard by the Director and in Order LD21-124, the Director ordered the Appellant to pay to the Respondents \$3,835.76 by May 3, 2021.

Order LD21-215

On March 30, 2021, the Respondents filed with the Director a Form 2 – Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) seeking that possession of the Premises be surrendered to the Respondents and directing the sheriff to put them in possession. Attached to the Form 2 was a Form 4 – Notice of Termination by Lessor of Rental Agreement dated March 2, 2021 (the “Form 4”).

The matter was heard by the Director and in Order LD21-125 the Director ordered the Appellant to vacate the Premises by 11:59 p.m. on April 12, 2021.

On April 9, 2021, the Commission received a Notice of Appeal from the Appellant, requesting an appeal of Orders LD21-124 and LD21-125 both dated April 8, 2021, issued by the Director.

The Commission heard the appeal on April 14, 2021, by way of telephone conference call. The Appellant participated by telephone. Greg Russell also participated by telephone, on behalf of the Respondents.

The Issues

The Notice of Appeal alleges that the Form 4 was unsigned and undated, and that rent in the amount of \$1,600 was paid in the month of March, 2021.

The Commission must therefore determine the following:

1. Whether and to what extent rent is due and owing to the Respondents?
and
2. Was the Form 4 complete, and is it valid?

Analysis

The Appellant submits that the evidence that was before the Director was not appropriately considered. She maintains that she did not receive a signed or dated Form 4, and also takes issue with the amounts she is alleged to owe for utilities.

The evidence before the Commission is that the Appellant had not paid any utilities for the period between December 2020 and March 2021. The Appellant does not dispute this fact, but instead disputes the amount owing. She made submissions regarding the energy efficiency of the Premises, claiming that it was not properly winterized. She also disputes the totals of the electricity bills, and states that because she did not receive invoices for the propane costs she should not have to pay.

The Commission heard evidence from both the Appellant and the Respondent that steps were taken in January 2021 to add insulation to the floor of the Premises. The Respondent also gave evidence that the Premises is not merely a cottage or a cabin, but a fully renovated older home which is insulated.

The Respondent stated that he receives invoices from his propane company directly, but that the Appellant would have received slips when the propane was delivered. The Appellant did acknowledge receiving at least one slip, but stated that the others must have blown away. The electricity bills for the relevant period were in evidence before both the Director and the Commission, and though the Appellant stated she did not question the authenticity of the bills, she disputed the usage detailed therein.

The Appellant seemed to suggest that her rent for the month of March was paid with her security deposit. The Respondent, however, denied this and indicated that the security deposit would be applied to any damages that may be identified once the Respondent vacates the Premises. The Commission agrees that, absent an explicit agreement between the parties, the security deposit must be dealt with in accordance with section 10 of the Act.

As for the Form 4, the Appellant referenced a picture of the front page of the Form 4. She denies having seen or received the second page of the Form 4, but the Respondent's evidence was that a complete Form 4 was served, a copy of which is in evidence before the Commission.

In summary, the Appellant did not provide any new evidence on appeal to cause the Commission to interfere with the findings of the Director.

A lessee has an obligation to pay rent. As this Commission has noted numerous times, a lessee has no unilateral right to withhold rent under the Act. In this case, the parties entered into a Rental Agreement which contained a specific clause pertaining to utility expenses. The Appellant's concern with the extent of those expenses does not entitle her to withhold rent.

DECISION

The appeal is dismissed.

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 dismissed; and
2. Orders Orders LD21-124 and LD21-125 are confirmed.

DATED at Charlottetown, Prince Edward Island, this 20th day of April, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

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.