



Docket: LR21020

Order: LR21-23

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Matthew Savage and Jiandan Huang, against Order LD21-214 issued by the Director of Residential Rental Property and dated June 8, 2021.

BEFORE THE COMMISSION ON

Wednesday, July 7, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: **Tuesday, July 6, 2021**

ORDER

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(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the question of whether the Director erred in disallowing a claim for return of rent.

BACKGROUND

Matthew Savage and Jiandan Huang (“the Tenants”) rent half of a semi-detached dwelling located at 9 Briggs Street, Summerside, PE, from landlord Nathan Kember. Rent for the unit is \$1,450 per month.

On April 13, 2021, the Tenants filed with the Director of Residential Rental Property (the “Director”) an application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking a return of rent.

In Order LD21-214 dated June 8, 2021, the Director dismissed the application.

The Tenants appealed.

The Commission heard the appeal on July 6, 2021, by way of telephone conference call. The Tenants appeared on their own behalf. Mr. Kember did not appear.

Disposition

The appeal is denied.

The Issue

Is there sufficient evidence to award the Tenants a return of rent?

Analysis

In the present appeal, the Tenants allege loss of quiet enjoyment and seek a return of rent as a remedy. They presented as evidence numerous complaints which were emailed to Mr. Kember and alleged that he failed to address their concerns. They have made additional allegations which fall outside of the *Act* and thus are beyond the jurisdiction of the Director and the Commission.

The Tenants’ complaint of loss of quiet enjoyment relies primarily on noise issues allegedly caused by the neighbour on the other side of the semi-detached dwelling. However, the Tenants have not provided Mr. Kember, the Director, or the Commission with audio recordings of the noise, or a written police report confirming police visits which would provide corroboration for their allegations.

Mr. Savage maintains that a “\$7,000 to \$10,000 recording device” would be needed to properly record the noise. He also maintains that there is insufficient storage space on his smartphone to record the sounds.

The Tenants explained that they expected Mr. Kember to document and investigate the noise and other complaints.

In matters under the *Act*, the onus generally rests on the party alleging a breach of a statutory condition to furnish evidence to support their allegations. The Commission finds that this is particularly true when a tenant seeks a return of rent, as a return of rent is an extraordinary remedy.

In the present appeal, the Commission finds that the onus is on the Tenants to corroborate their noise complaint. Since the noise was apparently heard in their unit and since they called the police, they were in the best position to furnish such evidence, both to Mr. Kember as it was occurring, and later to the Commission on appeal. As the Tenants failed to provide audio recordings or other supporting evidence, such as a police report, they failed to provide objective evidence to support their subjective testimony.

Accordingly, there is insufficient evidence to support a finding of a breach of quiet enjoyment and accordingly the appeal is denied.

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 LD21-214 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Wednesday, July 7, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell,
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* 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.