



Docket: LR21022
Order: LR21-25

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act* (the "**Act**"), filed by Stacy Driscoll, against Order LD21-210 issued by the Director of Residential Rental Property and dated **June 7, 2021**.

BEFORE THE COMMISSION ON Thursday,
July 22, 2021.

Panel Chair - J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, July 21, 2021

ORDER

CERTIFIED A TRUE COPY



Phillip Rafuse,
Appeals Administrator
Island Regulatory & Appeals Commission

This appeal asks whether a landlord is permitted to retain all, or a portion, of a lessee's security deposit.

BACKGROUND

A previous landlord rented premises located at 304 Richmond Street, Apartment #5, Charlottetown PE, to Lisa Hughes ("Ms. Hughes") commencing on January 11, 2016. Rent was the amount of \$575.00 per month. A security deposit in the amount of \$500.00 was required and paid at the beginning of the rental agreement with a further security deposit of \$340.00 paid on October 3, 2017. The current lessor, Stacy Driscoll ("Mr. Driscoll") acquired the premises on January 4, 2021. Mr. Driscoll testified that the previous lessor did not transfer a security deposit to him at the time of acquiring the premises and that he was not aware of and was not advised by the previous lessor that security deposits had been paid on Apartment #5.

Ms. Hughes vacated the premises at the end of February, 2021.

On April 23, 2021, Ms. Hughes filed with the Director of Residential Rental Property (the "Director") an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (Form 2) requesting a finding that the security deposit, or part thereof, should be forfeited or returned.

On April 30, 2021, the Director wrote to Mr. Driscoll requesting that he complete a Notice of Intention to Retain Security Deposit (Form 8) and forward the security deposit plus accrued interest to the Office of the Director. Mr. Driscoll did not provide the Director with a Form 8 and did not forward the security deposit funds to the Office of the Director.

In Order LD21-210, the Director found that the security deposits were paid to the previous lessor and ordered that Mr. Driscoll pay to Ms. Hughes, as well as to two third party associations, the security deposit funds.

Mr. Driscoll appealed.

The Commission heard the appeal on July 21, 2021. Mr. Driscoll, Ms. Hughes and Ms. Hughes' representative Emily Richard (Ms. Richard), appeared by way of telephone conference call.

Disposition

The appeal is denied.

The Issue

Did the Director err in finding that the security deposit be returned in full to the tenant and the third parties?

Analysis

Section 10 of the *Rental of Residential Property Act* (the "Act") sets out the statutory requirements with respect to security deposits. Subsection 10(12) of the Act reads:

Obligations of new lessor

(12) A person who acquires the interest of a lessor in residential premises, whether by purchase, mortgage sale or otherwise, has the rights and is subject to the obligations of the previous lessor with respect to a security

deposit paid to the previous lessor. 1988, c.58,s.10; 1990,c.53,s.3; 1998,c.100,s.2.

Subsection10(5) of the Act obligates a lessor who intends to keep all or part of a security deposit to serve a lessee with a Notice of Intention to Retain Security Deposit in the form prescribed by regulation (Form 8).

The Appellant acknowledged that he did not serve a Form 8 on the lessee.

The Commission finds that Exhibit E-8 establishes that the previous lessor required a security deposit in the amount of \$500.00. The evidence of Ms. Hughes and Exhibit E-7 establishes that Ms. Hughes paid the sum of \$200.00 toward the security deposit to the previous lessor. Exhibits E-9 and E-13 establish that a third party paid, on Ms. Hughes' behalf, the remaining portion of the initial security deposit in the amount of \$300.00. Exhibit E-10 establishes that another third party paid an additional security deposit in the amount of \$340.00 required by the previous lessor. The Appellant did not dispute the payments of the security deposits by the third parties, he only questioned whether or not the initial \$200.00 security deposit was paid by Ms. Hughes to the previous lessor.

Mr. Driscoll testified that the premises were subjected to some damage and that he was required to expend monies to clean and dispose of garbage and other discarded items left by Ms. Hughes. However, Mr. Driscoll did not provide any invoices for any of the expenses that he claims were incurred and, as noted above, did not provide the requisite Form 8 to be entitled to offset these expenses against the security deposit.

The Commission finds that the three security deposit payments were in fact paid to the previous lessor. Under the Act Mr. Driscoll, as the current lessor, is subject to the obligations of the previous lessor with respect to the security deposits paid and must return all of the security deposit funds, together with interest, to Ms. Hughes and the third party associations in accordance with the Director's Order.

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 LD21-210 is confirmed.**
3. **The security deposit, together with interest, shall be returned to the lessee, Ms. Hughes and the two third parties, the particulars of which are fully set out in Order LD21-210.**

DATED at Charlottetown, Prince Edward Island, **Thursday, July 22, 2021.**

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(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*** 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.