



Docket: LR21025
Order: LR21-27

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Cardon Enterprises Inc., against Order LR21-227 issued by the Director of Residential Rental Property and dated June 21, 2021.

BEFORE THE COMMISSION ON Monday, August 9, 2021.

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

Hearing Date: Tuesday, July 20, 2021

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the Commission to determine whether the Director erred in finding that an eviction notice was not valid.

BACKGROUND

Cardon Enterprises Inc. rented premises located at 73 St. Peter's Road, Apartment #1, Charlottetown, PE, to Kevin MacEwen ("Mr. MacEwen") commencing in June, 2017. The parties dispute the amount of rent payable each month.

On June 2, 2021, the landlord's representative, Carman MacArthur ("Mr. MacArthur") served a Notice of Termination by Lessor of Rental Agreement ("Form 4") on Mr. MacEwen citing failure to pay rent in the amount of \$3,758.00. The effective date of the Form 4 was June 21, 2021.

On June 4, 2021, Mr. MacEwen filed with the Director of Residential Rental Property (the "Director") an Application by Lessee to Set Aside Notice of Termination ("Form 6").

In Order LD21-227 dated June 21, 2021, the Director ordered that the Form 4 was invalid, the Form 6 was allowed, and that the rental agreement remain in full force and effect with the monthly rental being set at \$600.00 per month.

Cardon Enterprises Inc. appealed.

The Commission heard the appeal on July 20, 2021. Mr. MacArthur and Mr. MacEwen both participated by way of telephone conference call.

Disposition

The appeal is denied.

The Issue

Did the Director correctly determine that the Form 4 dated June 2, 2021 was invalid?

Analysis

Mr. MacArthur advised that the rent was originally \$650.00 per month, with \$50.00 paid by Holland College and \$600.00 paid by Mr. MacEwen, both payments due on the first of each month. Mr. MacArthur referred to Exhibit E-9 which contains a Tenant Information Sheet and two pages of Rental Records. He also claims increases in the rent based on the allowable annual increase set by the Commission. He claims that he is owed money for rent in the amount of \$3,758.00 as stated on the Form 4.

There is no standard form written rental agreement between the parties.

In Order LD19-311, dated July 19, 2019, the Director previously established the rent as \$600.00 per month, payable in two payments on the first and fifteenth of each month. Mr. MacArthur did not pursue an appeal of Order LD19-311.

Mr. MacArthur has appealed Order LD21-227.

When a landlord makes a claim for rent owing, the onus is on that landlord to establish the rent owing based on clear and complete records.

Mr. MacEwen provided numerous receipts for the past payment of rent.

Mr. MacArthur has provided Exhibit E-9 to the Commission following the filing of his appeal. The Commission finds that Exhibit E-9 is not a clear and complete record. Indeed, there are significant discrepancies between the Rental Records provided by Mr. MacArthur and the receipts provided by Mr. MacEwen.

The onus is on Mr. MacArthur to establish his claim and he ought to be in possession of his own complete rental business records. The Commission finds that there is insufficient evidence, on a balance of probabilities, to establish that the Director erred in the findings set out in Order LD21-227.

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 LD21-227 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Monday, August 9, 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.