



Docket: LR21032

Order: LR21-31

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Kayla MacDonald against Order LD21-297, issued by the Director of Residential Rental Property and dated August 9, 2021.

BEFORE THE COMMISSION ON Thursday, August 26, 2021.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Tuesday, August 24, 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 terminating a rental agreement due to the persistent and habitual late payment of rent by a tenant.

BACKGROUND

Kayla MacDonald (“Ms. MacDonald”) rents a single-family dwelling located at 13 Francis Street, Kensington, PE (the “Premises”), from Melissa Graham Burke (“Ms. Graham Burke”). Rent for the Premises is \$1,400 per month with rent due on the first day of the month.

On July 27, 2021, Ms. Graham Burke filed with the Director of Residential Rental Property (the “Director”) an application requesting an Order terminating the rental agreement because Ms. MacDonald is persistently and habitually late paying rent (the “Application”). Included in the Application were a series of Notices of Termination (“Form 4s”) directed to Ms. McDonald and signed by Ms. Graham Burke.

Ms. MacDonald challenged the Application.

In Order LD21-297 dated August 9, 2021, the Director ordered that Ms. MacDonald, and all occupants, must vacate the Premises by 2:00 p.m. on August 13, 2021.

Ms. MacDonald appealed tthe Commission on August 10, 2021.

The Commission scheduled the appeal to be heard on August 18, 2021. Ms. MacDonald requested a postponement of the appeal hearing.

The appeal was heard on August 24, 2021. Ms. MacDonald and Ms. Graham Burke participated by way of telephone conference call.

Disposition

The appeal is denied.

The Issue

The Commission must decide whether the Director’s decision to terminate the rental agreement due to persistent and habitual late payment of rent is justified.

Analysis

The evidence before the Commission establishes that six consecutive Form 4 termination notices were served on Ms. MacDonald for the months of February 2021 through July 2021 inclusive.

While the evidence establishes that rent for the months of February 2021 to June 2021 was ultimately paid, albeit late, Ms. Graham Burke also contends that the rent for July 2021 was never paid and she has provided bank records to establish that a rent payment was not received in July 2021.

Ms. MacDonald contends that she did pay the July 2021 rent on July 10, 2021.

Both parties acknowledge that no rent has yet been paid for the month of August 2021.

In Director's Order LD21-297, Ms. MacDonald was given the opportunity to file banking documents to establish her contention that she did pay rent in July 2021. No such documents were received by the Director, and no such documents were received by the Commission on appeal.

The Commission agrees with the Director's ruling that there was a persistent and habitual late payment of rent and that the rental agreement should therefore be terminated.

The Commission finds that there is no new evidence to warrant disturbing the findings and ruling of the Director.

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 LD21-297 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Thursday, August 26, 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.