



Docket: LR21034
Order: LR21-35

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Jay Varga against Orders LD21-269 and LD21-270 issued by the Director of Residential Rental Property and both dated July 19, 2021.

BEFORE THE COMMISSION ON Thursday, September 9, 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 Commission to determine whether the Director of Residential Rental Property (the “Director”) properly ordered a return of rent to a tenant due to an alleged unauthorized rent increase.

Background

The Appellant, Jay Varga (“Mr. Varga”), entered into a rental agreement with the Respondent, Terra Perry (“Ms. Perry”), for the premises located at 26 Sarah Court, Mermaid, PE (the “Premises”), for the period of August 23, 2019 to August 31, 2020. Rent in the amount of \$1,400 was due on the first day of the month, and electricity was included as a service.

The Parties then entered into a second rental agreement for the Premises for the period of October 1, 2020 to September 30, 2021. The second rental agreement stated that the rent was for \$1,300 and electricity was now an excluded service.

On May 3, 2021, Mr. Varga filed a rent owing application against Ms. Perry, alleging non-payment of rent for the month of May 2021.

Ms. Perry moved out of the premises on May 14, 2021, and on June 2, 2021, Ms. Perry filed an application for return of rent based upon an alleged unauthorized rent increase.

The two applications were heard by the Director on May 27, 2021 and June 28, 2021, and both matters were decided in Order LD21-269 dated July 19, 2021.

The Director found that the rent for the Premises had been increased from \$950 per month to \$1,400, and then to \$1,300 per month without authorization from the Commission as is required in subsection 23(3) of the *Act*, and awarded Ms. Perry \$3,043.19 payable by Mr. Varga for an unauthorized rent increase.

In the same order, the Director awarded Mr. Varga a total of \$950 for rent owing for the month of May 2021. The Director also awarded that the monthly rent for the Premises is \$950 excluding electricity, and that it would remain so until rent was increased in accordance with the provisions of the *Act*.

Mr. Varga appealed.

The matter was heard by the Commission on August 24, 2021. Mr. Varga and Ms. Perry both participated by way of telephone conference call.

Disposition

The Commission varies Director’s Order LD21-269.

The Issue

There are two issues to be addressed in this appeal:

1. Was there an unauthorized rent increase to the Premises, and is Ms. Perry entitled to a return of rent as a result?
2. Is rent owing to Mr. Varga?

Analysis

Was there an unauthorized rent increase?

Yes.

Subsection 23(3) requires a lessor to apply for a rent increase that exceeds the annual allowable amount. This obligation exists even where there is no rental agreement between the parties (see Commission Order LD20-26).

Mr. Varga testified that when he purchased the building in May 2019, he had no knowledge of what the previous tenant was paying for rent. He stated that \$950 is “not even close to market value”. He stated that Ms. Perry did not raise the issue with him until she vacated the Premises and decided not to pay her rent for the month of May 2021.

It is not disputed that there was no application made to the Office of the Director to increase the rent for the Premises from \$950 to \$1,400, or later to \$1,300 excluding electricity, per month. At the time that Mr. Varga purchased the Premises, as he was aware that the Premises was previously used as a rental property, and as he intended to continue renting it, he had an obligation to ensure that the rents he contemplated charging were permitted under the *Act*.

Is Ms. Perry entitled to a return of rent as a result?

Yes.

Ms. Perry testified that shortly after she signed the first rental agreement for the Premises, she was approached by the prior tenant, who advised her that the rent had previously been \$950 per month. Ms. Perry testified that she did not say anything about it to Mr. Varga because there were not a lot of rentals available on the market at the time, and she worried she would have to move. Ms. Perry did not raise the issue of the amount of rent she was paying for the duration of the first rental agreement, nor did she do so when she signed the second rental agreement for the Premises.

The Commission agrees with the Director that, notwithstanding the onus on Mr. Varga to make application to charge a greater than allowable rent for the Premises, Ms. Perry had an obligation to mitigate her losses and could have advised Mr. Varga much earlier in their rental relationship of the differences in rents. As such, the Commission confirms the reasoning and calculations made by the Director as to the amount payable by Mr. Varga to Ms. Perry for unauthorized as being **\$3,993.19** (\$1,314.87 plus \$2,678.41).

Is rent owing to Mr. Varga?

Yes, but the Commission varies Order LD21-269 and finds that Ms. Perry owes rent to the end of the rental agreement.

Ms. Perry acknowledges that she did not pay rent for May 2021.

Ms. Perry advised Mr. Varga in April 2021 that she intended to move out of the Premises in order to relocate to a different school district. The Parties communicated by text message over the course of the next several weeks, and Ms. Perry’s plans seemed to fluctuate over that period of time. She first indicated that she would be vacating on May

1st, and then possibly on June 1st, and ultimately she left the Premises on May 14, 2021. There was discussion between the Parties of trying to find a tenant to sublet the Premises, as the second rental agreement did not terminate until September 30, 2021.

Ms. Perry states that Mr. Varga rejected her proposed subletting option, she stated that she offered to stay for the duration of the rental agreement, but that Mr. Varga advised her that since she had given notice that she would be leaving by June 1st, he understood that the rental agreement had been terminated as of that date.

Mr. Varga also testified that he was not comfortable accepting the proposed sublet arrangement as the prospective tenant was living in Korea, could not attend in person to meet Mr. Varga or to view the property, and in any event would not be in the province until September 2021, at which point the rental agreement would expire.

Mr. Varga noted that Ms. Perry did not file a Form 3 to formally terminate the rental agreement early, and stated that he told her that she would need to find a sublet for the remainder of the rental agreement, otherwise she would be responsible for the payment of rent until September 2021. He stated that he encouraged her to contact the Office of the Director to seek advice in this regard.

Mr. Varga stated that he had placed ads seeking to secure a new tenant for the Premises, and that the entire building is now on the market for sale, as he and his wife have decided to get out of the rental business considering how poorly this experience has gone for them. He confirmed that he has not received any rent for the Premises since April 2021.

With respect to the unpaid rent application, the Commission notes that Mr. Varga filed his application on May 3, 2021. The matter was adjudicated on July 19, 2021, and this appeal was heard on August 24, 2021. The original application was for unpaid rent for the month of May, however given the passage of time, the Commission takes note of Mr. Varga's evidence of having received no further rental payments from Ms. Perry. The Commission heard evidence of the efforts of both Mr. Varga and Ms. Perry to mitigate their losses, and is satisfied that Mr. Varga took appropriate steps to secure a new tenant in the Premises.

The Commission finds that Ms. Perry did not file a Form 3 to formally terminate the rental agreement, and did not take additional mitigation steps to find a sublet for the remainder of the rental agreement. As such the Commission finds that Ms. Perry owes Mr. Varga rent for the months of May to September 2021 inclusive, being the balance of the duration of the rental agreement.

The Commission confirms the Director's finding that the monthly rent for the Premises is \$950 excluding electricity, until such time as the rent is increased in accordance with the *Act*. As such Ms. Perry owes Mr. Varga the total amount of **\$4,750** (\$950 per month for the five (5) remaining months of the rental agreement).

Conclusion

The Commission finds that Ms. Perry therefore owes to Mr. Varga the sum of **\$756.81** (\$4,750 minus \$3,993.19), payable forthwith.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*,

IT IS ORDERED THAT

1. **Director’s Order LD21-269 is hereby varied.**
2. **Ms. Perry shall forthwith pay to Mr. Varga the sum of \$756.81.**
3. **Rent for the Premises is \$950 per month, excluding electricity, until such time as it is increased in accordance with the Act.**

DATED at Charlottetown, Prince Edward Island, Thursday, September 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.