



Docket: LR21027

Order: LR21-44

IN THE MATTER of an appeal, under Section 25 of the ***Rental of Residential Property Act*** (the "**Act**"), filed by Mohammed and Huhuda Qaraghuli, against Order LD21-229 issued by the Director of Residential Rental Property and dated **June 21, 2021**.

BEFORE THE COMMISSION ON Friday,
October 1, 2021.

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

Hearing Date: Wednesday, September 8, 2021

ORDER

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(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

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

BACKGROUND

Brian McKenna and Willard Day (the "Landlords") rented a house located at 18 Johnson Avenue, Charlottetown PE, to Mohammed Hasan Mahdi Qaraghuli and Huhuda Qaraghuli (the "Tenants") commencing on October 1, 2020. Rent was the amount of \$2,850.00 per month. A security deposit in the amount of \$2,850.00 was required and paid.

The Tenants vacated the house on April 30, 2021. The Landlords sought to keep the full balance of the security deposit for cleaning and damage to the appliances and furniture. The Tenants wanted the security deposit returned. Both parties filed applications with the Office of the Director of Residential Rental Property seeking the security deposit.

In Order LD21-229, the Director found that the Landlords were entitled retain the security deposit, plus accrued interest, in the amount of \$2,859.51.

The Tenants appealed. The Landlords did not cross-appeal, but participated in the hearing and sought to uphold the Director's Order.

The Commission heard the appeal by way of telephone conference call on September 8, 2021. The Landlords participated on their own behalf. The Tenants also participated and were represented by their counsel, Conor Mullin.

Disposition

The appeal is denied and Director's Order LD21-229 is confirmed.

The Issue

Did the Director err in finding that the security deposit be returned in full to the Landlords?

Analysis

The Tenants argued three grounds of appeal at the hearing.

The first ground alleged that the Director erred in finding that the tenancy began in June 2020, rather than in October, 2020. The Tenants do not dispute that they were the sole occupants of the house from at least October 2020 to April 2021. Though the Tenants did submit additional evidence seeking to clarify the actual date the tenancy began, the Commission finds that this issue is not relevant to the issue of the disposition of the security deposit.

The second issue raised by the Tenants pertained to the Director's treatment of the photographic and video evidence in the record, and alleged that the Director did not properly explain why the Landlords' evidence was accepted while the Tenants' was not.

The Commission reviewed the evidentiary record. The Commission finds that the evidence submitted by the Tenants is not as detailed as that submitted by the Landlords. The photographs from a vantage point that does not show any detail in each room, and the videos are either very short and clipped, or show a very quick walk-through of the house. The Landlords' evidence provides more detail, and shows the damage clearly. The Commission does not agree that the Director erred in giving more weight to the Landlords' evidence over that of the Tenants'. The fact that this was not made more explicit in the Director's Order is not grounds to disturb the result.

Finally, the Tenants submitted that the damages were not greater than regular wear and tear, and that the Landlords' were relying on inflated values to replace the allegedly damaged appliances. The Commission finds that the Director was correct in finding that the evidence shows damage to the furniture and appliances beyond normal wear and tear. The Commission further finds that the Director properly assessed the evidence submitted by the Landlords to establish the cost of repairs.

During the hearing, counsel for the Tenants also argued that there was no evidence to prove that the Tenants' had actually caused the damage in the house, and suggested that the alleged damage could have been caused by someone other than the Tenants who had access to the house. Counsel for the Tenants provided no evidence whatsoever in support of the suggestion. The Commission dismisses this argument outright.

The Commission finds that there is no new evidence or basis upon which to disturb the findings in Director's Order LD21-229. 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, and Director's Order LD21-229 is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, **Friday, October 1, 2021.**

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Commissioner

(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.