



Docket: LR21042

Order: LR21-45

IN THE MATTER of an appeal under section 25 of the *Rental of Residential Property Act* (the "Act") filed by 101914 PEI Inc., against Order LD21-325 issued by the Director of Residential Rental Property and dated August 30, 2021.

BEFORE THE COMMISSION ON Friday,
October 8, 2021.

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

Hearing Date: Wednesday, October 6, 2021

ORDER

Compared and Certified a True
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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 security deposit.

BACKGROUND

A landlord, 101914 PEI Inc. (the “Landlord”), rented premises located at 64 Nicholas Lane, Apartment #17, Charlottetown, PE (the “Premises”), to Jennifer Bevins and Darren Banfield (collectively the “Tenants”) commencing on January 2, 2021. Rent was \$1,250 per month due on the first day of the month. A security deposit in the amount of \$1,250 was required and paid.

The Tenants vacated the Premises on June 29, 2021.

On July 9, 2021, the Landlord filed with the Director of Residential Rental Property (the “Director”) a Notice of Intention to Retain Security Deposit (Form 8) together with the security deposit, plus accrued interest, in the amount of \$1,259.09. The Landlord sought to retain the security deposit due to water damage that occurred following an incident when the Tenants’ toilet overflowed, as well as for damage to a sofa located in the unit.

On July 14, 2021, the Tenants filed with the Director an Application Re: Determination of Security Deposit (Form 9).

In Order LD21-325, the Director ordered that the security deposit in the amount of \$1,259.09 be paid to the Tenants.

The Landlord’s representative, Shirley Li (“Ms. Li”) appealed.

The Commission heard the appeal on October 6, 2021. Ms. Li, Ms. Bevins and Mr. Banfield appeared by way of telephone conference call.

Disposition

The appeal is denied and Director’s Order LD21-325 is confirmed.

The Issue

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

Analysis

Section 6, Statutory Condition 4 of the *Act* reads:

4. Obligation of the Lessee

The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.

[Emphasis added]

It is noteworthy that the *Act* does not make a lessee responsible for the repair of any damage. A lessee is responsible only for damage caused by a willful or negligent act.

The Commission finds that the incident that apparently caused the water damage, a toilet that overflowed, occurred on one occasion during the tenancy and agrees with the Director that there is no evidence to suggest the nature of the incident was either willful or negligent.

The Commission finds that the damage to the sofa was neither willful nor negligent and was caused by normal wear and tear. The Tenants had taken steps to notify Ms. Li in December 2020 of the wear that was occurring on the sofa, and provided photographs to her on two occasions showing the progression of the wear.

Ms. Li stated prior to the conclusion of the hearing that she felt she was being discriminated against as a newcomer to Prince Edward Island. The *Act* was passed by the Legislative Assembly and is part of the law of Prince Edward Island. It is the clear intent of the Legislative Assembly to limit tenant liability for damage to that caused by willful or negligent acts. Both the Director and the Commission are required to follow the law set out in the *Act*. Following the law is not discrimination.

Accordingly, the appeal is denied and Director's Order LD21-325 is confirmed.

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 LD21-325 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Friday, October 8, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

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* provide 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.