



Docket: LR21046

Order: LR21-47

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Nga Thu Ong against Order LD21-355 issued by the Director of Residential Rental Property and dated September 20, 2021.

BEFORE THE COMMISSION ON Monday, November 1, 2021.

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

Hearing Date: Tuesday, October 26, 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 erred in finding that the early termination of a rental agreement by the Tenants was valid.

BACKGROUND

Hanh Huu Vinh Nguyen and Linh Hong Ngo (the “Tenants”) entered a written fixed-term rental agreement for premises located at 15 Pond Street, Charlottetown, PE (the “Premises”), with Nga Thu Ong (the “Landlord”) commencing July 14, 2021 to January 13, 2022. Rent in the amount of \$2,000 was due on the 13th day of the month.

On August 26, 2021, the Tenants filed with the Office of the Director of Residential Rental Property (the “Director”) an Application for Enforcement of Statutory of Other Conditions of Rental Agreement seeking an order to authorize the termination of the rental agreement (“Form 2”).

In Order LD21-355 dated September 20, 2021, the Director ordered that the rental agreement be terminated effective August 31, 2021, and that the Tenants are not responsible for rent for the balance of the lease term or any associated costs of finding a replacement tenant.

The Landlord appealed.

The Commission heard the appeal on October 26, 2021. The Landlord was represented by Dai Nguyen Ba Cao. The Tenants were represented by Hanh Huu Vinh Nguyen. All participants participated by way of telephone conference call.

Disposition

The appeal is denied and Director’s Order LD21-355 is confirmed.

The Issue

Did the Director correctly determine that the Form 2 was valid?

Analysis

The Landlord contends the Premises were advertised and held out as a two-bedroom home, but there was a mattress in a room in the basement for “daytime resting”. The Tenants contend that they required three (3) bedrooms and the home was held out to be a three-bedroom home.

The Tenants filed a certified translation of text messages between the parties which are contained in Exhibit 13. Noteworthy are the following excerpts:

Dai (Landlord) – I will equip 3 beds for 3 rooms. You can sleep in any room you want.

...

Dai (Landlord) – So you and your wife stay in 1 room, 2 sons in 1 room and daughter in 1 room.

The evidence indicates that there were moisture issues in the basement and the basement windows did not meet bedroom egress requirements.

During the hearing, the Landlord provided an e-mail which he claimed proved that the Tenant agreed to two (2) bedrooms. This e-mail was in Vietnamese with a few English words contained within parenthesis.

The e-mail provided by the Landlord is not compelling. The e-mail needs to be understood in full context and a certified translation was not provided to the Commission. In any event, the email predated the email exchange contained in Exhibit 13, which clearly referenced the landlord preparing three bedrooms.

The text messages contained in Exhibit 13 were certified and stamped as an accurate translation on September 28, 2021. The content of the translated text messages is clear and compelling.

The Commission finds that the Tenants made known their need for a three-bedroom home and the Landlord misrepresented the Premises as three (3) bedrooms in the text message discussion. The basement room with a mattress was not a safe or suitable room for sleeping, could in no way be considered a bedroom, and the Tenants lawfully terminated the rental agreement.

There is no new evidence to disturb the findings of the Director and accordingly, the appeal is denied and Director's Order LD21-355 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 LD21-355 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Monday, November 1, 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.