



Docket: LR21050

Order: LR21-49

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Robert and Alinda Jamieson against Order LD21-374 issued by the Director of Residential Rental Property and dated October 1, 2021.

BEFORE THE COMMISSION ON Tuesday, November 9, 2021.

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

Hearing Date: Monday, November 8, 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 determined the amount of a return of rent to a tenant.

Background

The Appellants, Robert Jamieson (“Mr. Jamieson”) and Alinda Jamieson (“Ms. Jamieson”), entered into a verbal rental agreement with the Respondent, Susanna Buote (“Ms. Buote”), for the premises located at 8 Chestnut Street, Charlottetown, PE (the “Premises”), approximately ten (10) years ago. Rent in the amount of \$1,050 is due on the first day of the month.

On August 4, 2021, Ms. Buote filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) against Mr. and Mrs. Jamieson seeking a finding that rent is owed and an order that an amount found to be owed be paid.

The Form 2 application was heard by the Director on September 28, 2021, and the matter was decided in Order LD21-374 dated October 1, 2021.

The Director found that the rent for the Premises had been increased from \$780 per month to \$925 and then to \$1,050 per month without authorization from the Commission as is required in subsection 23(3) of the *Act*, and awarded Ms. Buote \$8,790, payable by Mr. Jamieson and Ms. Jamieson for unauthorized rent increases.

In the same order, the Director ordered that the monthly rent for the Premises is \$780 and that it would remain so until rent was increased in accordance with the provisions of the *Act*.

The Appellants appealed.

The matter was heard by the Commission on November 8, 2021. Mr. Jamieson and Ms. Jamieson both participated by way of telephone conference call and were assisted by legal counsel, T. Daniel Tweel (“Mr. Tweel”). Ms. Buote, along with Karen Vey and Wendy Bourque, also participated by way of telephone conference call.

Disposition

The Commission allows the appeal and varies Director’s Order LD21-374.

The Issue

The issue to be addressed in this appeal is the amount of return of rent.

Analysis

Counsel for the Appellants concede that a return of rent is owed to Ms. Buote. Counsel contends, however, that the amount of return of rent should be lower than that ordered by the Director.

Counsel for the Appellants provided evidence that the unlawful increase from \$780 to \$925 commenced on January 1, 2018, and that the unlawful increase from \$925 to \$1,050 commenced on July 1, 2020. Ms. Buote did not dispute this evidence.

The Commission accepts this evidence and calculates the amount of return of rent owed to Ms. Buote as \$6,060.

The Commission reiterates the findings of the Director that the rent for the Premises remain \$780 per month until lawfully increased according to the requirements of the *Act*.

The Commission wishes to remind landlords that all increases in rent require formal notice to tenants, that increases in rent beyond the annual allowable increase also require a specific application to the Director to justify such increase, that no such increase may be implemented until ordered by the Director and any “consent” by a tenant to an increase in no way removes or lessens the preceding requirements.

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 allowed.
2. Director’s Order LD21-374 is varied to reduce the return of rent that shall be paid by the Appellants to the Respondent to \$6,060.
3. In all other respects, Director’s Order LD21-374 is confirmed.

DATED at Charlottetown, Prince Edward Island, Tuesday, November 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.