



Docket: LR21062

Order: LR22-07

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Stephen Pate against Order LD21-476 issued by the Director of Residential Rental Property and dated December 10, 2021.

BEFORE THE COMMISSION ON

Wednesday, February 23, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

J. Scott MacKenzie, Q.C., Chair

Hearing Dates: January 31 and February 1, 2022

ORDER

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 and security deposit to a tenant.

Background

The Appellant, Stephen Pate (“Mr. Pate”), entered into a fixed term rental agreement with the Respondent, Maria Shehata (“Ms. Shehata”), for one-bedroom in a two-bedroom unit located at 47 Westwood Crescent, Charlottetown, PE (the “Premises”). Rent was in the amount of \$800.00 per month and \$3,200.00 per semester. Mr. Pate also collected an \$800.00 “non-refundable commitment fee” from Ms. Shehata, and stated that when she took possession of the Premises it would be converted into a security deposit.

On September 5, 2021, Ms. Shehata attempted to move into the Premises, but Mr. Pate would not let her in, citing concerns with her vaccination status relating to the COVID-19 virus. Ms. Shehata then sought rental accommodations elsewhere, as she believed that Mr. Pate had unjustifiably prevented her from taking possession of the Premises.

On October 1, 2021, Ms. Shehata filed an Application with the Director, seeking a return of the amounts paid for both rent and the security deposit.

By notice dated October 6, 2021, Mr. Pate indicated his intention to retain the security deposit. On October 13, 2021, Ms. Shehata filed an application with the Director to dispute Mr. Pate’s claim to the security deposit.

On October 29, 2021, the Director received security deposit funds from Mr. Pate in the amount of \$800.46, representing the amount of the security deposit plus interest.

Both applications were heard by the Director on November 15, 2021, and the matter was decided in Order LD21-476 dated December 10, 2021.

The Director ordered that Ms. Shehata would receive the security deposit in the amount of \$800.46 held in trust by the Director and that Mr. Pate pay Ms. Shehata the sum of \$2,818.44 by January 4, 2022.

Mr. Pate appealed.

The appeal was heard by the Commission on January 31 and February 1, 2022. Mr. Pate and Ms. Shehata both participated by way of telephone conference call.

Disposition

The appeal is allowed in part.

The Issues

The issue to be decided are as follows:

1. Was the Director correct in categorizing the “non-refundable commitment fee” as a security deposit? and

2. Was the Director correct in finding that the security deposit and rent, in the above noted amounts, be returned to Ms. Shehata – in other words, who owes whom, and how much?

Analysis

The evidentiary record before the Commission is voluminous. The appeal hearing took place over two mornings, and the parties made extensive submissions before the Commission. In this decision, the Commission will not reproduce in detail the evidentiary record made, nor the extensive arguments put forth in oral submissions. All are contained in the Commission's record of these proceedings.

Commitment Fee or Security Deposit?

The Commission agrees with the Director's reasoning and findings in respect of the categorization of the security deposit. The *Rental of Residential Property Act* does not authorize the collection or payment of a "non-refundable commitment fee". Though Mr. Pate may routinely charge such commitment fees when renting the Premises as a registered tourist accommodation, the legislation governing residential rentals does not permit for such fees.

Mr. Pate referred to Commission Order LR21-11 in support of his argument that he and Ms. Shehata had an agreement with respect to the \$800.00 payment, and as such he is entitled to keep the payment as the "non-refundable commitment fee". He cited (from page 2 of Order LR21-11):

"The Commission agrees that, absent an explicit agreement between the parties, the security deposit must be dealt with in accordance with section 10 of the Act."

The facts underlying Order LR21-11 are distinguishable from this case. The tenant in that case had alleged that her landlord had agreed to apply a security deposit against unpaid rent. The facts did not substantiate this. Section 10(5) of the Act contemplates security deposits being used to offset unpaid rent. That case did not involve an agreement that converts the nature of the payment to something not permitted by the Act.

The Commission finds that the Director correctly concluded that the payment made by Ms. Shehata to Mr. Pate in the amount of \$800.00 (minus PayPal processing fees, which will be discussed below) was a security deposit. Its disposition must therefore be determined in accordance with the provisions of the *Rental of Residential Property Act*.

Who owes whom, and how much?

It is necessary to determine the actual amounts that were paid by Ms. Shehata to Mr. Pate before a finding can be made as to the amounts potentially owing.

With respect to the security deposit, the evidence establishes that Ms. Shehata transferred to Mr. Pate the sum of \$800.00 via PayPal. PayPal charged a fee of \$31.50, resulting in Mr. Pate receiving a total of \$768.50. The Commission disagrees with the Director's finding that there was ambiguity with respect to the PayPal fees, and finds that the total

amount of the security deposit paid was \$768.50. Mr. Pate cannot hold as a security deposit an amount greater than he actually received. The Commission finds that Ms. Shehata is responsible for the PayPal fees.

With respect to the payment of rent, the evidence establishes that Ms. Shehata transferred \$2,950.00 to Mr. Pate via PayPal. PayPal deducted \$115.35 in fees, resulting in Mr. Pate receiving a total of \$2,834.65. The evidence establishes that there was a clear understanding between the parties that Ms. Shehata was responsible for the PayPal fees in this transaction.

The foundation of this entire dispute stems from a conversation that occurred on the doorstep of the Premises on September 5, 2021. Ms. Shehata was originally scheduled to move in on September 11, 2021, but she arrived early as she had been advised (turns out, incorrectly) that her COVID-19-related isolation period had ended. Mr. Pate refused her entry on that day, citing his concern that she had not yet received her vaccination against COVID-19.

There was much evidence led by the parties as to the reasons for Mr. Pate having denied entry to Ms. Shehata on September 5, 2021. Mr. Pate's position was that he denied her entry so as not to contravene, or be a party to the contravention of, public health orders in place at the time requiring the isolation of travelers to PEI. Ms. Shehata testified that she felt Mr. Pate unjustifiably refused her entry and was intimidating in his treatment of her when she arrived at the Premises early.

Ultimately, Ms. Shehata decided to find alternate accommodations. On September 10, 2021, Ms. Shehata advised Mr. Pate via email of her intention to break the rental agreement.

The Commission finds that Ms. Shehata is responsible for the termination of the rental agreement. Upon being denied entry to the Premises on September 5, 2021, Ms. Shehata's legal recourse was to contact the Rental Office and make application for relief under the Act. She did not do so. Instead, Ms. Shehata sought accommodation elsewhere, and broke her lease without complying with the provisions of the Act.

The Commission recognizes that Ms. Shehata was only newly arrived in Prince Edward Island when these events took place and may not have been aware of the legal avenues available to her to assist her in resolving this dispute. This does not, however, absolve her of her obligations as a tenant under the Act.

The evidentiary record shows that reasons given by Mr. Pate as to why he denied Ms. Shehata entry to the Premises on September 5, 2021 differ slightly from the reasons he presented on appeal. The record shows that in September 2021, Mr. Pate was primarily concerned with Ms. Shehata's vaccination status, as opposed to the particulars of her isolation requirements. That said, it is unnecessary to examine this discrepancy further as the Commission has already determined that Ms. Shehata terminated the rental agreement based on Mr. Pate's decision to deny her entry to the Premises, regardless of his reasons for doing so.

After Ms. Shehata terminated the rental agreement, Mr. Pate immediately sought to mitigate his damages by advertising for a new tenant. He spent \$39.04 on a Kijiji ad, and was able to secure a new tenant for October 1, 2021. Mr. Pate successfully satisfied his duty to mitigate as required by s. 29 of the *Act*.

Disposition

The appeal is allowed in part.

The Commission finds that Ms. Shehata owes Mr. Pate rent for the month of September 2021 in the amount of \$800.00. Mr. Pate is also entitled to recover \$39.04 for the cost of the Kijiji ad. The balance of the rent paid by Ms. Shehata to Mr. Pate is to be returned.

In summary:

Rent	\$2,834.65
Security Deposit	\$768.50
Total paid by Ms. Shehata	\$3,603.15
Less September 2021 rent	-\$800.00
Less Kijiji fee	-\$39.04
Total payable by Mr. Pate to Ms. Shehata	\$2,764.11

The Commission notes that on appeal Mr. Pate sought his costs in this appeal, including damages for lost wages. The Commission does not have statutory authority to make such awards, and as such these claims are 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 allowed in part.
2. Ms. Shehata shall receive the security deposit funds held in trust by the Rental Office in the amount of \$800.46.
3. Mr. Pate shall forthwith pay the balance owing to Ms. Shehata in the sum of \$1,964.11.

DATED at Charlottetown, Prince Edward Island, Wednesday, February 23, 2022.

BY THE COMMISSION:



Panel Chair - Erin T. Mitchell,
Commissioner

J. Scott MacKenzie, Q.C. - Chair and CEO

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.