



Docket: LR22001

Order: LR22-18

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Steven and Shelley MacNeill against Order LD21-484 issued by the Director of Residential Rental Property and dated December 14, 2021.

BEFORE THE COMMISSION ON Wednesday, March 30, 2022.

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

Hearing Date: Wednesday, March 23, 2022

ORDER

Compared and Certified a True
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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, Steven MacNeill (“Mr. MacNeill”) and Shelley MacNeill (“Mrs. MacNeill”), entered into a written rental agreement with the Respondents, Megan Grady (“Mrs. Grady”) and Sage Grady (“Mr. Grady”), for the premises located at 13 Clearview Drive, Stratford, PE (the “Premises”), in May 2019. Rent in the amount of \$1,450 was due on the 28th day of the month.

On October 12, 2021, Mr. and Mrs. Grady filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) against Mr. and Mrs. MacNeill 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 November 23, 2021, and the matter was decided in Order LD21-484 dated December 14, 2021.

The Director found that the rent for the Premises had been increased from \$1,200 per month to \$1,450 per month without authorization from the Director as is required in subsection 23(3) of the *Act*, and awarded Mr. and Mrs. Grady \$7,500, payable by Mr. and Mrs. MacNeill for the unauthorized rent increase.

In the same order, the Director ordered that the monthly rent for the Premises is \$1,200 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 March 23, 2022. Mr. and Mrs. MacNeill both participated by way of telephone conference call, along with their witnesses Paul Christopher and Natasha Daley. Mrs. Grady also participated by way of telephone conference call.

Disposition

The Commission dismisses the appeal and confirms Director’s Order LD21-484.

The Issue

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

Analysis

The Appellants told the Commission that the Premises were first rented for \$1,400 per month. Paul Christopher testified that he briefly rented the Premises at the rate of \$1,400 per month. No documentary evidence was provided to corroborate that the rent was \$1,400 per month when Mr. Christopher was a tenant of the Premises.

The Appellants advised the Commission that the Premises were then rented to a woman for \$1,400 per month. After she left, the Appellants were prepared to rent to a man for

\$1,350 per month, but he ended up going elsewhere. They then rented to another man for \$1,200 or \$1,250 per month. The Appellants then rented to a couple who provided 24 post-dated cheques of \$1,200 per month. This was less than the requested rent, but the couple lived in the Premises for some time and the Appellants reluctantly deposited the post-dated cheques for \$1,200 as they came due. The Appellants then rented to the Respondents for \$1,450 per month and entered into a written rental agreement specifying this amount of rent.

The Respondents advised the Commission that after they moved out of the Premises they found out from the previous tenants that they had paid \$1,200 per month.

The Commission accepts that the rent for the Premises was initially \$1,400 per month, but that rate was then reduced. While the Appellants may have requested rent higher than \$1,200 per month from the tenants immediately prior to the Respondents, the Appellants deposited the post-dated cheques as they came due and thus are deemed to have accepted rent at \$1,200 per month. Unfortunately for the Appellants, such acceptance established the rent for the Premises at \$1,200 per month and no application was made to the Director to lawfully increase the rent prior to the Respondents leasing the Premises.

Accordingly, the Commission agrees with the Director and confirms Order LD21-484.

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 dismissed.
2. Director's Order LD21-484 is confirmed.

DATED at Charlottetown, Prince Edward Island, Wednesday, March 30, 2022.

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.