



Docket: LR22014

Order: LR22-20

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by North American Health Research against Order LD22-032 issued by the Director of Residential Rental Property and dated February 7, 2022.

BEFORE THE COMMISSION ON Tuesday,
April 19, 2022.

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

Hearing Date: Friday, April 1, 2022

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 found that the Notice of Termination was not served in good faith.

Background

A previous landlord entered into a written fixed-term rental agreement with Cynthia Hogue (“Ms. Hogue”) for the premises located at 7–18 Elena Court, Charlottetown, PE (the “Premises”) in March 2015. The current landlord, North American Health Research (“the Appellant”), purchased the property in February 2018. Rent in the amount of \$819 is due on the first day of the month. Ms. Hogue vacated the Premises on July 31, 2021.

On November 19, 2021, Ms. Hogue filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) seeking a finding that rent is owed and an order than an amount found to be owed be paid.

The Form 2 application was heard by the Director on January 19, 2022, and the matter was decided in Order LD22-032 dated February 7, 2022.

The Director found that the Appellant did not serve a Notice of Termination by Lessor of Rental Agreement (the “Form 4”) in good faith and awarded Ms. Hogue \$1,774 as reimbursement for moving costs and costs associated with moving.

The Appellant appealed.

The matter was heard by the Commission on April 1, 2022. The Appellant was represented by Jie Hu (“Ms. Hu”). Both Ms. Hu and Ms. Hogue participated by way of telephone conference call.

Disposition

The Commission dismisses the appeal and confirms Director’s Order LD22-032 with a variation in the reasoning that the award is not a return of rent, but rather is justified under s. 8(f) of the Act.

The Issue

The issue to be addressed in this appeal is whether the Form 4 was served in good faith, and if Ms. Hogue is indeed entitled to reimbursement for her moving costs.

Analysis

Ms. Hu stated that she and her family fully intended to move into the Premises when the Form 4 was served, but a series of circumstances ultimately changed their plans. She provided evidence of her husband’s work status, of her travel during the summer of 2021, and of her several communications with the Rental Office, all of which she says establish that she was acting in good faith when the Form 4 was served.

Ms. Hogue stated that she moved out as required by the Form 4 and that she incurred moving expenses to do so. She stated she did not dispute the Form 4 at the time because

she believed Ms. Hu was within her rights to give notice of her intention to occupy the Premises.

She noted that Ms. Hu had previously attempted to increase the rent beyond the annual allowable amount. She testified that Ms. Hu stated if she did not agree to an increased rent, that Ms. Hu would turn the Premises into a short-term rental, or otherwise take it off the rental market. Ms. Hogue testified that she was shortly thereafter served with the first of three eviction notices, all served since the beginning of 2022. Ms. Hogue indicated that the first notice was withdrawn by Ms. Hu. She acknowledged that the second notice was justified as she was a day late in paying her rent, but it was rectified and the tenancy continued. The third notice is the subject of this appeal.

Sometime after moving out, Ms. Hogue became aware that persons other than Ms. Hu and her family were living in the Premises. She stated she had also been informed by a third party that the rent these new persons were paying was higher than what she had been paying.

Both parties requested the opportunity to file additional documents after the hearing and the Commission granted that request.

Ms. Hogue filed evidence relating to the first eviction notice she received, being a January 28, 2022, Form 4 whereby the Appellant sought to terminate the rental agreement based on clauses 14(1)(i) and 15(1)(b) of the *Act*. It was the evidence of the parties that this Form 4 was withdrawn by the Appellant and never filed with the Director.

Ms. Hu filed several documents, one of which was relevant to this appeal. This document is a letter from the current tenant of the Premises, bearing the date 2020 [sic] – 03-16. This letter indicates that the Premises were now fully furnished and suggests occupancy for the current tenant began near the end of November 2022. The current tenant goes on to state:

We voluntarily paid her \$50/day in the first month including everything for all 3 of us. We told her some of us may move out and some one [sic] may move in, as our jobs may change back and forth in PEI. We can't give her a 30-day notice, she agreed with it. When we asked for reduce [sic] rent, she accepted as well. We have paid \$45/day for 3 of us in 2022. Our tenancy is not short rental it is flexible rental as we agreed. We are not tourists; we are workers in PEI.

There is no evidence before the Commission that the Appellant received approval from the Director to increase the rent to \$1,350 or \$1,500 per month. The Director may therefore wish to consider whether a further investigation into the rent being charged for the Premises is appropriate.

The January 28, 2022, Form 4 is noteworthy in that it indicates an intent to “convert the premises to a use other than residential use”. The letter from the current tenant suggests some conversion with an accompanying increase of rent may have occurred. On balance, the evidence provided by Ms. Hu on appeal does not, in the Commission’s view, establish that that Ms. Hu was acting in good faith when she served the Form 4.

Accordingly, the Commission agrees with the Director that the termination of the rental agreement was unlawful and that an appropriate remedy is to reimburse Ms. Hogue for her moving expenses.

The Director characterized the reimbursement of moving expenses as a return of rent. The Commission is of the view that the following provision in the *Act* would be a more appropriate statutory basis for this remedy:

8. Enforcement

Where a lessor or lessee fails to comply with a statutory condition or any other condition or covenant of a rental agreement, a person may make written application to the Director indicating the condition or covenant alleged to have been contravened and seeking a remedy, and the Director shall investigate the matter and may

...

(f) make such other decision or order as he considers necessary to ensure compliance with, or to remedy a violation of, this Act or the rental agreement. 1988, c.58, s.8; 1990, c.53, s.1; 1998, c.100, s.1.

Accordingly, the Commission dismisses the appeal, and confirms Director's Order LD22-032, subject to a variation in the reasoning: specifically, that the reimbursement of moving expenses is authorized under subsection 8(f) of the *Act*.

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 LD22-032 is confirmed, subject to a variation in the reasoning that the reimbursement of moving expenses is authorized under subsection 8(f) of the *Act*.

DATED at Charlottetown, Prince Edward Island, Tuesday, April 19, 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.