



Docket: LR22021

Order: LR22-21

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by David and Lesley King against Order LD22-068 issued by the Director of Residential Rental Property and dated March 10, 2022.

BEFORE THE COMMISSION ON Thursday, April 21, 2022.

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

Hearing Date: Tuesday, April 19, 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 declined an application for an alleged unauthorized rent increase and an alleged improper electricity usage.

Background

The Appellants, David King (“Mr. King”) and Lesley King (“Ms. King”), entered into an oral rental agreement with a landlord, Grant Lawlor (“Mr. Lawlor”) for the premises located at 7 Love Court, Charlottetown, PE (the “Premises”) in May or June, 2012. Rent in the amount of \$1,100 was due on the first day of the month.

On December 14, 2021, Mr. and Ms. King filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Form 2”) against Mr. Lawlor claiming an unauthorized rent increase and improper furnace electricity usage.

The Form 2 application was heard by the Director on February 16, 2022, and the matter was decided in Order LD22-068 dated March 10, 2022.

The Director denied the Form 2 application.

The Appellants appealed.

The matter was heard by the Commission on April 19, 2022. Mr. and Mrs. King both participated by way of telephone conference call. Mr. Lawlor and Joanne Lawlor (“Ms. Lawlor”) also participated by way of telephone conference call.

Disposition

The Commission dismisses the appeal and confirms Director’s Order LD22-068.

The Issue

The issues to be addressed in this appeal are:

1. Whether the claims of Mr. and Ms. King are prevented by clause 2(1)(g) of the *Statute of Limitations*, R.S.P.E.I. 1988, Cap. S-7 (the “*Statute of Limitations*”) and
2. Whether there is sufficient evidence to warrant a reversal or a variation in Director’s Order LD22-068.

Analysis

The Kings’ claim is based on two elements. Firstly, Mr. and Ms. King maintain that in 2012 they were told by the previous tenants that the rent for the Premises was \$900 per month. Those previous tenants are now deceased. Notwithstanding the evidence provided by the Lawlors in the form of copies of bank statements showing the previous rent was \$1,100 per month, the Kings’ position is that those statements do not conclusively prove that the rent was not \$900. As such, they contend they were paying rent greater than the amount allowed by the Director.

Secondly, Mr. and Ms. King contend that they were never advised that the furnace in the Premises was also used to heat 9 Love Court, and as such, they believe they were unfairly paying for more than their share of the electricity bill. They learned that there was only one furnace in the building in 2015 when a relative began living in 9 Love Court. Mr. King advised the Commission that even after learning this, they believed that there was a third electrical service for the furnace paid for by Mr. and Ms. Lawlor. Mr. King acknowledged that they did not raise the issue with the Lawlors nor make further inquiries as to the nature of the electricity bills, which they continued paying until the end of the tenancy.

Ms. Lawlor advised that they have no financial records, other than the copies of bank statements already submitted into evidence, to establish the rent paid by the previous tenants. She noted that cancelled cheques would have been returned to the person who issued them, and maintained that the rent charged to the prior tenants was \$1,100 per month.

Mr. Lawlor told the Commission that he had explained the situation of the electricity for the furnace to Mr. and Ms. King back in 2012, and told them that as a result he would not seek future allowable rental increases. Mr. King disputes this.

As explained in Director's Order LD22-068, 2(1)(g) of the *Statute of Limitations* applies:

(1) *The following actions shall be commenced within and not after the times respectively hereinafter mentioned:*

...

(g) *any other action not in this Act or any other Act specifically provided for, within six years after the cause of action arose.*

Mr. and Ms. King state that a limitation period of only six years is unfair to long-term tenants. The six-year time limitation set out in the *Statute of Limitations* is part of the statute law of the Province of Prince Edward Island and cannot be changed by the Director or the Commission. The Commission agrees with the finding of the Director that the Kings are statute-barred from making their claim.

Even if the *Statute of Limitations* did not apply, the onus is on Mr. and Ms. King to provide evidence to support their claim. The evidence before the Director, and now before the Commission, is insufficient to establish a return of rent claim. The passage of time, in this case ten years, makes it difficult for either party to place reliable evidence before the Commission. In the present case, the best evidence before the Commission as to the rent charged to the prior tenant is the financial records provided by Mr. and Ms. Lawlor, rather than the hearsay evidence provided by Mr. and Ms. King.

Accordingly, the Commission dismisses the appeal and confirms the decision of the Director in Order LD22-068.

In the course of giving evidence, Mr. and Ms. King stated that they are aware that the Premises are now rented or offered for rent at \$1,500 per month. It is not known to the Commission whether Mr. and Ms. Lawlor sought and received approval from the Director to increase rent for the Premises from \$1,100 to \$1,500 per month. The Director may therefore wish to consider whether a further inquiry into the rent being charged for the Premises is warranted.

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 LD22-068 is confirmed.

DATED at Charlottetown, Prince Edward Island, Thursday, April 21, 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.