



Docket: LR22038

Order: LR22-31

IN THE MATTER of an appeal, under Section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Karl Ford against Order LD22-151 issued by the Director of Residential Rental Property and dated May 19, 2022.

BEFORE THE COMMISSION ON Tuesday, June 21, 2022.

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

Hearing Date: Friday, June 17, 2022

ORDER

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(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks whether there is a landlord tenant relationship and if so, whether the tenant is entitled to a return of a security deposit.

Background

Karl Ford (“Mr. Ford”), rented Apartment 2 at 645 Crooked Creek Road, Oyster Bed Bridge, PE (the “Premises”), to Alex MacPherson (“Mr. MacPherson”) for a gentleman named Henry, who at the time was an employee of Mr. MacPherson. Rent was \$685 per month and due on the first day of the month. A security deposit was paid by Mr. MacPherson.

Mr. Ford seeks to keep the full balance of the security deposit for damages and cleaning. Mr. MacPherson wants the security deposit returned. Both parties filed applications with the Office of the Director of Residential Rental Property (the “Director”) seeking the security deposit.

In Order LD22-151, the Director found that Mr. MacPherson was entitled to retain the security deposit in the amount of \$696.

Mr. Ford appealed.

The Commission heard the appeal by way of telephone conference call on June 17, 2022. Both Mr. Ford and Mr. MacPherson participated.

Disposition

The appeal is dismissed and Director’s Order LD22-151 is confirmed.

The Issue

Did the Director err in finding that, (a) there was a rental agreement between Mr. Ford and Mr. MacPherson and, (b) that Mr. MacPherson was entitled to a return of the security deposit?

Analysis

Mr. Ford’s claim against the security deposit was based on his evidence that the Premises were not clean and in good repair when Henry moved out, and that he incurred costs to clean and make repairs.

Mr. MacPherson stated that he did not receive notice that the rental agreement was being terminated and thus had no opportunity to clean, make repairs and arrange for a new sub-tenant to move in.

The Commission finds that the rental agreement was between Mr. Ford and Mr. MacPherson and Henry would occupy the Premises as a sub-tenant. When Henry informed Mr. Ford he was going to leave, Mr. Ford should have communicated with Mr. MacPherson. Mr. Ford acknowledged that he did not have any discussions with Mr. MacPherson when he learned Henry would be vacating the Premises.

Instead, Mr. Ford acted as if Henry was the tenant, rather than the sub-tenant. Mr. MacPherson thus had no opportunity to ensure the Premises were clean, in good repair and move in a new worker as a new sub-tenant.

The Commission agrees with the findings of the Director and confirms Order LD22-151. Mr. MacPherson is entitled to the return of the security deposit.

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 LD22-151 is confirmed.

DATED at Charlottetown, Prince Edward Island, Tuesday, June 21, 2022.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

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.