



**Docket: LR22035**

**Order: LR22-33**

**IN THE MATTER** of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Xixiu (Shirley) Shi, against Order LD22-129 issued by the Director of Residential Rental Property and dated May 3, 2022.

**BEFORE THE COMMISSION ON** Tuesday, June 21, 2022.

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

Hearing Date: Thursday, June 16, 2022

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# 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”) erred in finding that there should be a return of rent to a tenant.

## **BACKGROUND**

Xixiu (Shirley) Shi (“Ms. Shi”) rented premises located at 210 Stratford Road, Stratford, PE (the “Premises”), to Michael Kennedy (“Mr. Kennedy”) commencing January 2, 2018. Rent was due on the first day of the month and the amount of the authorized rent for the Premises is under dispute.

Mr. Kennedy vacated the Premises on May 26, 2021.

On March 15, 2022, Mr. Kennedy filed with the Director an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking a return of rent based upon alleged unauthorized rent increases.

The matter was heard by the Director on April 25, 2022, and in Order LD22-129 dated May 3, 2022, the Director ordered Ms. Shi to pay Mr. Kennedy the sum of \$2,304.57 by June 3, 2022. The Director also ordered that the rent for the Premises remains at \$900 per month, including the cost of water, cooking stove, refrigerator, washer, dryer, parking, snow removal and grass cutting until the rent is increased in accordance with the *Act* and its Regulations.

Ms. Shi appealed.

The Commission heard the appeal on June 16, 2022, by way of telephone conference call. Ms. Shi participated and was assisted by her daughter Yue Shi. Mr. Kennedy also participated.

## **Disposition**

The appeal is dismissed. Director’s Order LD22-129 is varied as a result of new evidence warranting a re-calculation of the return of rent owing.

## **The Issue**

Did the Director correctly determine that a tenant is entitled to a return of rent and the amount of that rent?

## **Analysis**

Ms. Shi felt that the return of rent should be reduced because she felt she was entitled to the allowable increase for the Premises for preceding years. She testified that she had purchased the Premises in 2011 and at that time the rent that was charged was \$840 per month.

Mr. Kennedy testified that he had initially paid \$950 per month and, toward the end of his occupancy, was required to pay the water and sewer bill, an included service, in order to avoid an earlier termination of the rental agreement. He testified that after he moved out

of the Premises, he learned that the previous tenant was paying \$900 per month when she had left. Mr. Kennedy stated that he had never received a notice of increase in rent (Form 10) from Ms. Shi. Mr. Kennedy requested that his return of rent should be higher, based on the actual payments he made for each of the years 2018, 2019, 2020, and 2021.

Ms. Shi acknowledged that she had not served a Form 10 on Mr. Kennedy.

Under questioning from the Commission panel, Ms. Shi testified that the Premises had been rented since 2011, and she acknowledged that she has never served a Form 10 on any tenant for the Premises since she purchased the Premises in 2011.

The following provisions of the *Act* set out what is required to undertake a rental increase:

21. *Frequency of rent increase*

*The rent payable for residential premises shall not be increased until twelve months have elapsed since the date of any previous increase or, in the case of residential premises not previously rented, the date on which rent was first charged.*

22. *Notice of rent increase*

**Every notice of increase of rent for residential premises shall**

**(a) be in writing in the form prescribed by regulation; and**

**(b) be served on the lessee**

**(i) in the case of a weekly agreement, at least three weeks before the date on which it is to take effect,**

**(ii) in the case of a monthly agreement, at least three months before the date on which it is to take effect.**

23. *Permitted increase*

(1) *Except as provided in subsection (3) and notwithstanding the terms of any rental agreement, the amount of any rent increase between January 1 and December 31 of any year shall not exceed the percentage amount which is established by an order of the Commission and published in the Gazette.*

(2) *Representations*

*The Director shall invite written representations from lessors and lessees to assist in establishing the annual prescribed percentage rent increase.*

(3) *Application for additional increase*

**Where the lessor seeks a rent increase greater than the amount permitted by subsection (1), the lessor shall apply to the Director for approval of the proposed increase not later than ten days after notifying the lessee.**

...

[Emphasis added]

Sections 13 and 14 of the *Act's* Rental of Residential Property Regulations (the "Regulations") state:

13. *Notice of rent increase*

- (1) *Subject to subsection (2) a notice of increase of rent of residential premises, pursuant to section 22 of the Act, **shall be in Form 10.***

*Notice of rent increase, exempt premises*

- (2) *A notice of increase of rent of residential premises which are exempt from sections 21 and 23 of the Act, pursuant to clauses 20(a) and (b) of the Act, shall be in Form 11. (EC10/89)*

14. *Increase above allowed percentage*

*An application by the lessor to the Director for approval of a rent increase exceeding the allowable percentage, pursuant to subsection 23(3) of the Act, **shall be in Form 12.** (EC10/89)*

[Emphasis added]

As Ms. Shi testified that she never served her tenants with a rental increase form, she cannot now avail herself of the annual allowable rental increases.

Ms. Shi has provided evidence to the Commission that the rent for the Premises when she purchased it in 2011 was \$840. The Commission therefore finds that the lawful monthly rent for the Premises is \$840, not \$900 as found by the Director. As he paid rent for 41 months, he should have paid \$34,440 (\$840 per month X 41 months)

Mr. Kennedy actually paid \$39,583.30 as per the following:

- January 2018 to February 2019 - \$950 per month for 14 months = \$13,300
- March 2019 to December 2019 - \$964.25 per month for 10 months = \$9,642.50
- January 2020 to December 2020 - \$976 per month for 12 months = \$11,712
- January 2021 to May 2021 - \$985.76 per month for 5 months = \$4,928.80

Due to illegal increases in rent, Mr. Kennedy paid \$5,143.30 more than the lawful rent for the Premises.

Mr. Kennedy was also required to pay \$304.57 for water and sewer charges (\$204.57 paid direct to the Town of Stratford plus \$100 withheld from the security deposit by the Landlord) near the end of the rental agreement, even though municipal water and sewer was an included service in the rental agreement.

Accordingly, the total return of rent and money paid for included services awarded by the Commission is \$5,447.87.

Throughout the hearing, Ms. Shi mentioned that market rent would be \$1,500 per month and that she had not been aware of the notice requirements for rental increases. The Commission wishes to point out that, under the current *Act*, there is a mechanism for landlords to apply to increase rent beyond the annual allowable percentage; comparative rents in the marketplace are not determinative. In addition, parties to a rental agreement

cannot use ignorance of the law to shield them from the responsibilities and obligations set out in 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. Based on new evidence, the Commission has varied the return of rent plus money paid for included services awarded by the Director to \$5,447.87.
3. The Commission orders the Ms. Shi to pay the sum of \$5,447.87 by July 31, 2022.
4. The monthly rent for the Premises is \$840 per month, including water, cooking stove, refrigerator, washer, dryer, parking, snow removal and grass cutting, until such time as the rent is lawfully increased in accordance with the *Act* and Regulations.

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

**BY THE COMMISSION:**

(sgd. Erin T. Mitchell)

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Panel Chair - Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

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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.