



Docket: LR22040

Order: LR22-36

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Kimberly Kilman, against Order LD22-182 issued by the Director of Residential Rental Property and dated June 7, 2022.

BEFORE THE COMMISSION ON Friday, July 8, 2022.

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

Hearing Date: Wednesday, July 6, 2022

ORDER

Compared and Certified a True
Copy

(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 not be a return of rent and the determination of the security deposit.

Background

Kimberly Kilman (“Ms. Kilman”) rented one half of a side-by-side duplex located at 12 Miah Drive, Cornwall, PE (the “Premises”), from Red Sands Property Management (“Red Sands”) commencing August 28, 2021. Rent for the Premises was \$1,800 per month and was due and payable on the first day of the month. A security deposit in the amount of \$1,800 was required and paid.

Ms. Kilman vacated the Premises on March 8, 2022.

On March 24, 2022, Ms. Kilman filed with the Director an Application re Determination of the Security Deposit (“Form 9”).

On March 31, 2022, Ms. Kilman filed with the Director an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking a return of rent pursuant to subsection 8(d.1) of the *Act*.

Both applications were heard by the Director at the same time. In Order LD22-182 dated June 7, 2022, the Director denied the Form 2 application and ordered that Red Sands receive the security deposit in the amount of \$1,801.89.

Ms. Kilman appealed.

The Commission heard the appeal on July 6, 2022. Ms. Kilman and her daughter Iliah Kilman participated by way of telephone conference call. Red Sands was represented by Brett Poirier (“Mr. Poirier”).

Disposition

The appeal is dismissed and Director’s Order LD22-182 is confirmed.

The Issues

Did the Director correctly determine that the Form 2 was invalid and properly determine the disbursement of the security deposit? Did the Director correctly determine that the return of rent claim was invalid?

Analysis

Ms. Kilman stated that, with respect to the determination of the security deposit, the damage to the countertop and kitchen cabinet doors were due to ordinary wear and tear, that the dent to the garage door did not affect its operation, and the damage to the ceiling caused by duct tape was a response to the noise issue. She denied damage to the light fixture. She also submitted that the Notice of Intention to Retain Security Deposit (“Form 8”) was filed on March 20, 2022, when the deadline to do so was March 18, 2022. She submitted that the claim for damages should be rejected as it was overstated and the Form 8 was filed several days late. Ms. Kilman submitted, with respect to the claim for return or rent, that her claim was only about Red Sand’s failure to respond to her concerns.

Mr. Poirier submitted that the Director's Order had reached the correct conclusion and that the findings were reasonable. He submitted that Red Sands carefully investigated Ms. Kilman's concerns with respect to unusual noises.

With respect to Ms. Kilman's concerns about the late filing of the Form 8, subsection 10(5) of the *Act* reads:

Retention from deposit to cover damage

The lessor may retain all or part of a security deposit and interest thereon where he believes the lessee is liable to the lessor for damage to the residential premises caused by a breach of statutory condition 4, or for outstanding rent, provided that the lessor, within ten days of the date on which the lessee delivers up possession of the residential premises or such longer period as the Director may permit, serves the lessee with a notice of intention to retain security deposit in the form prescribed by regulation.

[Emphasis added]

In her Notice of Appeal, Ms. Kilman expressed concern that the Director denied her the opportunity to submit audio evidence. She further added:

Due to the nature of this complaint, it is essential to submit audio.

The Commission permitted Ms. Kilman to file her audio clips as evidence, and these audio clips formed part of the new evidence received in Exhibit E-12. The Commission carefully listened to these audio clips as part of the review of evidence prior to the hearing.

The Commission finds that Red Sands looked into Ms. Kilman's concerns in an appropriate manner. There is no evidence before the Commission to warrant disturbing the findings of the Director in Order LD22-182. Accordingly, the appeal is dismissed and Director's Order LD22-182 is confirmed.

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 LD22-182 is confirmed.

DATED at Charlottetown, Prince Edward Island, the 8th day of July, 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.