



Docket: LR22057

Order: LR22-55

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Susan Canning against Order LD22-265 issued by the Director of Residential Rental Property and dated August 1, 2022.

BEFORE THE COMMISSION ON Friday,
September 23, 2022.

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

Hearing Date: Wednesday, September 21, 2022

ORDER

Compared and Certified a True
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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 determining the disbursement of a security deposit.

Background

Susan Canning (“Ms. Canning”) rented premises located at 2021 Mill Road, Lower Freetown, PE (the “Premises”), to Samantha Noonan and Campbell Giddings (collectively the “Tenants”) commencing November 1, 2021. Rent for the Premises was \$1,000 per month and was due and payable on the first day of the month. A security deposit in the amount of \$1,000 was required and paid.

The Tenants vacated the Premises on May 31, 2022.

On June 17, 2022, the Tenants filed with the Director an Application re Determination of the Security Deposit (“Form 9”), together with a copy of a security deposit notice received from Ms. Canning seeking to retain the security deposit, plus interest.

On June 17, 2022 the Director wrote to Ms. Canning requesting that she forward to the Director the security deposit, plus interest, in the amount of \$1002.43. The Director did not receive the security deposit funds from Ms. Canning.

On July 29, 2022 the Form 9 application was heard by the Director. In Order LD22-265 dated August 1 2022, the Director denied the application and ordered Ms. Canning to forward to the Tenants the security deposit, plus interest, in the amount of \$1002.43.

Ms. Canning appealed.

On September 16, 2022 Ms. Canning paid to the Director, in trust, the amount of \$1002.43 representing the security deposit, plus interest.

The Commission heard the appeal on September 21, 2022. Ms. Canning and Paul Canning (the “Cannings”) along with their witness Jason Greencorn participated by way of telephone conference call. The Tenants and their witness Michelle Noonan also participated.

Disposition

The appeal is denied and Director’s Order LD22-265 is confirmed.

The Issues

Did the Director properly determine the disbursement of the security deposit?

Analysis

The Cannings testified as to damage to the Premises and some of its contents and fixtures, referencing photographs they submitted into evidence. They submitted that the total damage would exceed that of the security deposit. They did not provide receipts for items replaced, repaired or the cost of cleaning.

The Tenants denied the damages described by the Cannings and submitted into evidence various videos which they feel demonstrate that the Premises were clean and in good condition when they vacated the Premises on May 31, 2022.

The evidence before the Commission is conflicting. With the exception of one video from November 3, 2021, none of the photographs or videos have a date stamp. One of the videos, which appears to be a walkthrough to show the Premises after the Tenants moved their items out, has a spoken reference to May 31.

The onus is on the lessor, when seeking to retain the security deposit, to establish that the lessees failed to maintain the standard of ordinary cleanliness and repair damage caused by any willful or negligent act of the lessees or persons permitted on the premises by the lessees. The Act specifically exempts damage caused by normal wear and tear.

The Commission finds that the Cannings have not met the onus, given the conflicting evidence.

The Commission agrees with the findings of the Director and accordingly the appeal is denied and Director's Order LD22-265 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 denied.
2. Director's Order LD22-265 is confirmed.

DATED at Charlottetown, Prince Edward Island, the 23rd day of September, 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.