



Docket: LR22068

Order: LR22-66

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Dwayne Gallant and Shawna Clow, against Order LD22-403 issued by the Director of Residential Rental Property and dated November 14, 2022.

BEFORE THE COMMISSION ON Monday, December 12, 2022.

Panel Chair - Erin T. Mitchell, Commissioner

J. Scott MacKenzie, K.C., Chair and CEO

Hearing Date: Friday, December 9, 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”) erred in denying an application for return of rent.

Background

Dwayne Gallant (“Mr. Gallant”) and Shawna Clow (“Ms. Clow”) (collectively the “Tenants”) rented premises located at 27 Elena Court, Apartment 9B, Charlottetown, PE (the “Premises”), from Bhadrashish Properties Corporation (the “Landlord”) commencing in November, 2016. Rent for the Premises was \$1,195 per month and was due and payable on the first day of the month.

On September 21, 2022, the Tenants filed with the Director an application for an order (Form 2) requesting a return of rent.

On November 9, 2022, the application was heard by the Director. In Order LD22-403 dated November 14, 2022, the Director denied the Tenants’ request.

The Tenants appealed.

The Commission heard the appeal by way of telephone conference call on December 9, 2022. Mr. Gallant participated. The Landlord was represented at the hearing by Cody MacDonald (“Mr. MacDonald”) of JC Property Management.

Disposition

The appeal is allowed, Director’s Order LD22-403 is reversed and a return of rent in the amount of \$1,195.00 is ordered for the month of September 2022.

The Issue

Did the Director correctly deny the request for a return of rent?

Analysis

Mr. Gallant testified that there had been an ongoing issue for the last two years at the Premises and at other units in the same building. Following action taken by the Landlord, the problem appeared to go away but then it returned. The Tenants had ongoing difficulty making contact with the Landlord’s property manager, noting a failure to respond to text messages and phone calls, leaving the Tenants in a situation where they did not know what, if anything, was going to be done about the ongoing problems. Mr. Gallant stated that they only learned about some steps being taken by the Landlord through their neighbours who were contacted by the property manager. Mr. Gallant advised that he finally moved out of the Premises in September 2022. Mr. Gallant stated that September rent had been paid and he requests a return of the rent paid for September 2022.

Mr. MacDonald acknowledged that the problem has existed for approximately two years. He stated that the Landlord had hired one company to provide services and they returned several times without a permanent resolution. After no improvement in September 2022, the Landlord hired a new company which used a different methodology, performed their work in November 2022 and will return for follow up in December 2022. Mr. MacDonald described having intermittent conversations with the Tenants, but did not deny that he had

not responded to the communications from Mr. Gallant about the issues in September, 2022.

The Commission is mindful of the fact that the Landlord did take action and may have received poor advice from the first company hired to remedy the problems with the Premises. However, this apparent poor advice was through no fault of the Tenants and with the problem ongoing, the onus was on the Landlord to monitor the situation and, if need be, seek out a different company to ensure the work was done correctly. This appears to have eventually occurred.

However, the Commission's primary concern is that the Landlord, through the property manager, failed to communicate with and respond to the text and telephone inquiries of the Tenants. Section 31 of the *Act* requires a lessor to provide a lessee with contact information for a person who is responsible for the property. The Commission finds that there is a duty for such person to respond to relevant inquiries and legitimate concerns. In this matter the concerns were relevant and certainly legitimate and keeping all lessees aware of the situation, including the Tenants, is expected. This failure to properly advise the Tenants and the failure to respond to their frequent enquiries of the Landlord seeking information about what was going to be done to remedy the problem left the Tenants in a situation where they were not aware whether or not anything was going to be done by the Landlord. Mr. Gallant stated that they could no longer endure the problem and determined that they could no longer live in the unit. It is this failure by the Landlord to respond to enquiries related to the problems, resulting in the Tenants having no knowledge of the Landlord's plans or intentions to remedy the problem, that led the Tenants to decide to leave the Premises that justifies a return of rent.

Accordingly, the Commission allows the appeal, reverses Director's Order LD22-403 and grants the Tenant's application for a return of rent for the month of September 2022 in the amount of \$1,195.00.

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 allowed and Director's Order LD22-403 is reversed.
2. The lessor, Bhadrashish Properties Corporation, shall return rent for September 2022 in the amount of \$1,195.00 to the lessees Dwayne Gallant and Shawna Clow, said payment due not later than December 31, 2022.

DATED at Charlottetown, Prince Edward Island, Monday, December 12, 2022.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell, Commissioner

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C. - Chair and CEO

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.