



Docket: LR22074
Order: LR23-03

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by 102106 PEI Inc., against Order LD22-433 issued by the Director of Residential Rental Property, dated December 8, 2022.

BEFORE THE COMMISSION ON Wednesday, January 25, 2023.

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

Hearing Date: Tuesday, January 17, 2023

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 a return of rent was warranted.

BACKGROUND

102106 PEI Inc. (the “Landlord”) rents an apartment located at 131 North River Road, Charlottetown, PE (the “Premises”) to Jillian Epping (“Ms. Epping”). Rent is \$692.00 per month due on the first day of the month.

On October 24, 2022, Ms. Epping filed with the Director an application requesting an order to prohibit the discontinuance of the service in question and a return of rent (the “Application”).

In Order LD22-433 dated December 8, 2022, the Director allowed the Application in part and ordered that the Landlord pay Ms. Epping \$200.00 forthwith upon receipt of the Order.

The Landlord appealed the Order.

The Commission heard the appeal by way of telephone conference call on January 17, 2023. The Landlord was represented by Sean Li (“Mr. Li”) and was accompanied by the Landlord’s Property Manager, Chris Welsh (“Mr. Welsh”). Ms. Epping informed the Commission prior to the hearing that she would not be participating.

Disposition

The appeal is allowed and remedy set out in Director’s Order LD22-433 is reversed.

The Issue

Did the Director correctly determine that an application be allowed in part?

Analysis

Mr. Li and Mr. Welsh described the circumstances which began with post-tropical storm Fiona and a loss of electricity for 11 days. Electricity was restored at the building on October 5, 2022. Significant damage had occurred to the building, particularly to the roof. They contacted a technician to check and evaluate the boiler. The technician checked the boiler on or about October 8, 2022 and the boiler was then turned on the morning of October 9, 2022.

Mr. Li and Mr. Welsh described the heating system in the building and referenced the text messages exchanged between them and Ms. Epping. They also noted that Ms. Epping had expressed concerns about noise from another apartment on many occasions and also expressed concerns about a proposed rental increase that was later cancelled as a result of government legislation.

The Commission notes that Ms. Epping had provided an email from another tenant. That email notes heating issues that preceded September 2022. This email suggests that the building has had some past issues with heating.

The Commission finds that the onus rests on the party alleging a breach of a statutory condition to provide evidence to support the allegations. In the case where a tenant seeks a return of rent, compelling objective evidence is required to support the application for a return of rent as a return of rent is an extraordinary remedy.

Ms. Epping, in her emailed statement of January 4, 2023 characterized the matter as a “he said she said situation”. The Commission considers that as a fair characterization of the situation.

The evidence suggests to the Commission that the building had some heating issues both before and after Fiona. The evidence also satisfies the Commission that the Landlord took good faith steps to ensure that the heating system was safely re-activated following the restoration of electricity and an assessment of damage. The Commission is also satisfied that the Landlord had continued to investigate heating issues following the re-activation of the heating system.

While there is evidence of some ongoing heating issues, there is no compelling objective evidence which would warrant the extraordinary remedy of a return of rent. Accordingly, the Commission allows the appeal and reverses the remedy set out in Director’s Order LD22-433.

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.
2. The remedy set out in Director’s Order LD22-433, specially that the Landlord shall pay the Tenant \$200.00 forthwith (for lack of heat), is reversed.

DATED at Charlottetown, Prince Edward Island, this 25th day of January, 2023.

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.