



Docket: LR23002

Order: LR23-04

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Liling Bai against Order LD22-448 issued by the Director of Residential Rental Property and dated December 21, 2022.

BEFORE THE COMMISSION ON Wednesday, January 25, 2023.

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

Hearing Date: Tuesday, January 24, 2023

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 Office of the Director of Residential Rental Property (the “Director”) erred in allowing the early termination of a rental agreement by a tenant.

BACKGROUND

Liling Bai (the “Landlord”) entered a written fixed-term rental agreement for premises located at 12 Arcona Drive, Charlottetown, PE (the “Premises”), with Tracey and Tonny Nendarto (the “Tenants”) from September 15, 2022 to September 14, 2023. Rent in the amount of \$2,750 was due on the first day of the month.

On November 17, 2022, the Tenants filed with the Director an Application for Enforcement of Statutory of Other Conditions of Rental Agreement seeking an order to authorize the termination of the rental agreement (“Form 2”).

In Order LD22-448 dated December 21, 2022, the Director ordered that the rental agreement be terminated effective 11:59 p.m. on November 27, 2022.

The Landlord appealed.

The Commission heard the appeal on January 24, 2023. The Landlord and Tenants participated by way of telephone conference call.

Disposition

The appeal is dismissed and Director’s Order LD22-448 is confirmed.

The Issue

Did the Director correctly determine that the Form 2 was valid?

Analysis

The primary issue is the Landlord’s duty to mitigate given the Tenants’ early termination of the rental agreement.

Section 29 of the *Act* reads:

29. If the lessee abandons the premises or terminates the rental agreement otherwise than in accordance with this Act, the lessor shall mitigate any damages that may be caused by the abandonment or termination to the extent that a party to a contract is required by law to mitigate damages.

In Order LR20-39, the Commission explored a landlord’s duty to mitigate in considerable depth and then concluded:

In addressing the lessor's duty to mitigate under section 29 of the Act, the Commission finds that the adequacy of mitigation, not just whether or not mitigation occurred, may be considered. The quantum of the claim and the remaining duration of the rental agreement are relevant facts to consider when addressing the adequacy of mitigation. What may be considered reasonable efforts to mitigate for a small

claim or a short period of time may be lacking for a large claim or an extended period of time.

In the present case, the Tenants actively attempted to sublet the Premises. They placed a Kijiji advertisement and had over 15 prospective tenants apply. They vetted these applicants, submitting 5 candidates to the Landlord. Three of the applicants were pressing the Tenants, one of which wanted to provide a security deposit on the day she viewed the Premises. The Landlord did not accept any of the referred applicants.

Section 6, Statutory Condition 5 permits the subletting of premises, subject to the consent of the lessor. That consent will not be unreasonably withheld.

The Commission finds that the bulk of mitigation attempts were due to earnest efforts by the Tenants to sublet the Premises. By contrast, the Landlord initially demonstrated only minimal efforts to mitigate. The Commission finds that the Landlord did not meet the duty to mitigate in this case and the Commission agrees with the reasoning and findings provided by the Director in Order LD22-448. Accordingly, the appeal is dismissed, Order LD22-448 confirmed, and the rental agreement between the parties terminated on November 27, 2022 at 11:59 p.m.

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 LD22-448 is confirmed.
3. The rental agreement between the parties terminated effective 11:59 p.m. on November 27, 2022.

DATED at Charlottetown, Prince Edward Island, Wednesday, January 25, 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.