



Docket: LR23003
Order: LR23-05

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Tanya Burke, against Order LD23-018 issued by the Director of Residential Rental Property, dated January 19, 2023.

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
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 an eviction notice was valid.

BACKGROUND

Tanya Burke (“Ms. Burke”) rents a unit at 18 Douglas Street, Charlottetown, PE (the “Premises”), from Zheng Liang Hu (the “Landlord”).

On October 20, 2022, Ms. Burke was served with a Notice of Termination by Lessor of Rental Agreement for pursuant to subsection 8,(d)(3) of the *Act* (the “Form 4”). The effective date of the Form 4 was December 20, 2022.

On December 22, 2022, the Landlord filed an application seeking an order that possession of the Premises be surrendered to the Lessor and directing the Sheriff to put the Landlord in possession. On January 4, 2023, the Landlord filed another application with the Director requesting a finding that rent is owed and an order that an amount found to be owed be paid (collectively the “Applications”).

In Order LD23-018 dated January 19, 2023, the Director found that the Applications were valid and ordered that the rental agreement be terminated effective January 31, 2023 at 11:59 p.m.; that Ms. Burke pay to the Landlord \$3,750.00 forthwith upon receipt of this Order; and a certified of the Order could be filed with the Supreme Court and enforced by Sheriff Services as permitting by the *Act*.

Ms. Burke appealed the Order.

The Commission heard the appeal by way of telephone conference call on January 24, 2023. Ms. Burke participated. The Landlord was represented by Bing Wang (“Ms. Wang”) and Ming Zhang (“Ms. Zhang”).

Disposition

The appeal is dismissed and Director’s Order LD23-018 is confirmed, subject to a variation in the amount of rent owing.

The Issue

Did the Director correctly determine that the Notice of Termination dated October 20, 2022 was valid, and that rent was owing?

Analysis

Both parties made accusations against the other without supporting documents. Ms. Burke initially stated that she had paid the rent for November 2022 in cash but did not receive a receipt. She later acknowledged that she had not paid rent for November and December 2022 and January 2023. The Landlord’s representatives claimed that Ms. Burke had not paid \$2000 worth of rent on or about May 2021 but did not offer a ledger sheet to prove past rent was unpaid.

One matter which is certain is that Director’s Order LD22-213, issued on June 24, 2022, required the Landlord to pay or credit the tenant \$863.10. Both parties agree that this sum was not paid. The Landlord’s representatives, however, claim that there was an oral

agreement to offset the \$863.10 against the alleged \$2000 owing from 2021. Given that the agreement was denied by Ms. Burke and not in writing, and given that no ledger sheet was provided by the Landlord's representatives, the Commission rejects this claim.

What is clear is that rent for November, December and January, totaling \$3750 was not paid, even though Ms. Burke maintains that the money was there in the bank. The fact that Ms. Burke had the money to pay is irrelevant if she did not pay. The fact that the Landlord's representatives did not "collect" the rent is also irrelevant. A lessee has the duty to pay rent to the lessor and a lessor is not obligated to make efforts to track down a lessee and collect rent. The rent is due and must be paid.

However, the Director awarded a payment or credit of \$863.10. As this sum was not paid, the Commission shall reconcile this credit. Accordingly, the Commission finds that the rent owing, as of the date of this Order, is \$2,886.90 (\$3750 - \$863.10).

The appeal is dismissed and Director's Order LD23-018 is confirmed, subject to a variation in the rent owing, which is determined to be \$2,886.90.

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 LD23-018 is confirmed, subject to a variation in the amount of rent owing, which is now calculated to be \$2,886.90.

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.