



Docket: LR23007

Order: LR23-08

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "Act"), filed by Philip and Colleen Cameron against Order LD23-044 issued by the Director of Residential Rental Property and dated February 9, 2023.

BEFORE THE COMMISSION ON Wednesday,
March 22, 2023.

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

Hearing Date: Wednesday, March 8, 2023

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the question of whether the Director of Residential Rental Property (the “Director”) erred in not terminating a rental agreement due to the persistent and habitual late payment of rent by a tenant.

Background

In August, 2021, Philip Cameron (“Mr. Cameron”) and Colleen Cameron (“Ms. Cameron”) (collectively the “Landlord”) purchased the premises located at 374 Jennifer Street, Summerside, PE, (the “Premises”) from a previous landlord and continued the month-to-month rental agreement with Amanda Gallant (“Ms. Gallant”). Rent is \$1010.00 per month and due and payable on the 1st day of the month. A security deposit of \$1000.00 was required and paid.

On January 16, 2023, the Landlord filed with the Director an application requesting an order terminating the rental agreement alleging Ms. Gallant is persistently and habitually late paying rent (the “Application”). Included with the Application were a series of Notices of Termination (“Form 4s”) directed to Ms. Gallant and signed by the Landlord.

In Order LD23-044 dated February 9, 2023, the Director ordered that the Application be denied and that the rental agreement continue in full force and effect.

The Landlord appealed.

The appeal was heard on March 8, 2023, by way of telephone conference call. The Landlord was represented by Ms. Cameron. Ms. Gallant participated in the telephone conference call.

Disposition

The appeal is allowed, Order LD23-044 is reversed and the rental agreement is terminated effective April 30, 2023 at 11:59 p.m.

The Issue

Did the Director correctly determine that the Application was invalid?

Analysis

Ms. Cameron testified that the Landlord purchased the Premises in August 2021, at which time Ms. Gallant was already a tenant. Ms. Cameron stated that Ms. Gallant was late paying her rent for most months since that time and referenced numerous specific Form 4s. Ms. Cameron testified that the Landlord has bills to pay and late payment of rent results in interest charges as well as the expense and time to serve Form 4s. Ms. Cameron noted that as of the hearing, March 2023 rent had not been paid and a Form 4 was issued on March 3, 2023. A Form 4 for February 2023 was issued on the 6th day of that month and payment was received on the 14th day.

Ms. Gallant testified that the details of her situation were explained in the hearing before the Director. She stated that she had always ultimately paid the rent. She stated that she

has the money to pay the rent for March 2023 but she will not pay it until the outcome of the appeal is known.

The Commission agrees with the Director that the evidence supports a finding of habitual lateness.

The Commission, however, disagrees with the Director's observations about the equivalent legislation in Saskatchewan. The Commission finds that the Saskatchewan legislation provides the decision maker with significant equitable jurisdiction, while the *Act* does not.

Section 70(6) of Saskatchewan's *The Residential Tenancies Act 2006* reads as follows:

(6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in the circumstances, including all or any of the following:...

[Emphasis added]

This section applies to all applications for orders respecting any residential tenancy dispute between a landlord and a tenant.

In contrast, section 13(3) of the *Act* is restricted to matters of habitual lateness. That said, it appears to provide some discretion:

13.(3) Where a lessee is persistently or habitually late in the payment of rent the lessor may apply to the Director for such order, including termination of the rental agreement as the Director considers just.

[Emphasis added].

Notwithstanding the wording of section 13(3), neither the Director nor the Commission is a court possessing inherent jurisdiction. The Commission finds that the Director's reliance on section 70(6) of Saskatchewan's *The Residential Tenancies Act 2006* is therefore somewhat in error. The Legislative Assembly of Prince Edward Island did not legislate that the Director or the Commission possess the same broad scope of discretion in equity afforded to Saskatchewan's Office of Residential Tenancies. Though the word "just" is used in both Acts, the Commission finds that the purpose and context of the word in the two legislative schemes are distinguishable.

Though the apparent equitable jurisdiction contained in subsection 13(3) cited above may permit the Director or the Commission some discretion, it does not, in the Commission's view, permit the Director or the Commission to completely override valid and uncontested evidence that establishes a pattern of habitual late payment of rent.

In Order LD23-044 the Director stated:

The Officer emphasizes that despite the rental agreement continuing under the current conditions, it is important for the Tenant to put her best efforts forward to pay the rent on the first of each month, in full.

The Commission heard from Ms. Gallant that she has not paid her rent for March, and that she has chosen to withhold payment of March rent until the outcome of this appeal is known. This unfortunately does not demonstrate best efforts to pay rent on the part of Ms. Gallant.

Accordingly, the Commission allows the appeal and reverses the decision of the Director in Order LD23-044. Ms. Gallant must pay the rent for March 2023 forthwith and the rental agreement is terminated effective April 30, 2023 at 11:59 p.m. Ms. Gallant remains responsible to pay rent for both March and April, 2023.

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 LD23-044 is reversed.
2. Rent for the month of March 2023 in the amount of \$1,010.00 shall be paid by Ms. Gallant to the Landlord forthwith.
3. Rent for the month of April 2023 in the amount of \$1,010 shall be paid by Ms. Gallant to the Landlord on April 1, 2023.
4. The rental agreement is terminated effective April 30, 2023 at 11:59 p.m.
5. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, on Wednesday, March 22, 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.