PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Docket: LR23009
Order: LR23-09

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the "*Act*"), filed by Pamela and Kelly Van Horn, against Order LR23-049 issued by the Director of Residential Rental Property, dated February 14, 2023.

BEFORE THE COMMISSION ON Wednesday, March 22, 2023.

Panel Chair - Erin T. Mitchell, Commissioner

M. Douglas Clow, Vice-Chair

Hearing Date: Tuesday, March 21, 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 a return of rent was warranted.

BACKGROUND

Pamela Van Horn ("Ms. Van Horn) and Kelly Van Horn ("Mr. Van Horn") (collectively the "Tenants") rented a home located at 44 Victory Lane, Brackley Beach, PE (the "Premises") from Alanna Jankov ("Ms. Jankov") and Stephen McLean ("Mr. McLean") (collectively the "Landlords"). Rent was $985.00 per month due on the first day of the month.

The Tenants vacated the Premises in November, 2022.

On November 25, 2022, the Tenants filed with the Director an application requesting a return of rent due to alleged changes to the lease agreement (the "Application").

In Order LD23-049 dated February 14, 2023, the Director allowed the Application in part and ordered that the Landlords pay the Tenants the amount of $382.50 on or before March 14, 2023.

The Tenants appealed the Order.

The Commission heard the appeal by way of telephone conference call on March 21, 2023. The Tenants were represented by Ms. Van Horn and Mr. Van Horn. The Landlords were represented by Ms. Jankov and Mr. McLean.

Disposition

The appeal is dismissed.

The Issue

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

Analysis

The basis of the Tenants' claim relates to three separate issues.

Lack of Heat

The Tenants allege that from May to November, 2022, the furnace in the Premises was malfunctioning, and they did not have sufficient heat in the Premises. They testified that they notified the Landlords numerous times during those months about the issue. The Tenants confirmed that the issues with the furnace did not impact the provision of hot water, due to the presence of an electric water heater. Though there was a heat pump, the Tenants' evidence is that it was insufficient and it caused them significant inconvenience.

The Landlords testified that they were made aware of issues with the furnace in May, 2022, and thereafter took steps to retain a repair person to address the issues. They testified that they had difficulty in retaining someone reliable. Their evidence was that it was only when they were contacted by Environmental Health in the fall of 2022 that they

learned the Tenants had complained about the lack of heat, and in response they immediately purchased space heaters for the use of the Tenants. The furnace was replaced in November 2022.

While it appears to the Commission that the Landlords were slow to ultimately address the faulty furnace, Ms. Van Horn confirmed in her testimony that she suffered no financial loss as a result. Though certainly inconvenient, the evidence establishes that the Landlords were taking steps to address the issue. The Commission therefore agrees with the Director's findings that no economic loss occurred to the Tenants and no return of rent is warranted.

Snow Removal

The Tenants believe that they were overcharged in rent for the provision of snow removal services. Further, they stated that the Director made an error in stating that the snow clearing charge was $438.00 in 2020 when it was actually $483.00. Accordingly, they contend that the amount ordered by the Director for an overpayment of snow clearing should be increased from $382.50 to $427.50.

The Landlords stated that they agreed with the outcome of the Director's Order and paid the sum of $382.50 to the Tenants by e-transfer.

The Commission finds that paragraph 21 of the Director's Order is in error in stating "The rental agreement dated July 1, 2018, stated the previous landlord would provide snow clearing for $300.00 per year.".

In fact, the July 1, 2018 rental agreement with the previous owner of the Premises identifies the following services and facilities as the responsibility of the Lessee:

> *Grass cutting, snow (driveway), General upkeep of Property*

The July 1, 2019 rental agreement between the Landlords and the Tenants identifies the following services and facilities as the responsibility of the Lessee:

> *Grass cutting, driveway snow*

An addendum referenced to a previous agreement dated May 12, 2016 and attached to both of the above rental agreements states:

> *There will be a one-time seasonal snow removal charge as all houses on victory lane [sic] contribute to getting the road open, max charge of 300.00 (on or around Nov 15).*

The July 1, 2021 rental agreement noted that snow removal for parking lot and walkways was split by lessee and lessor.

The July 1, 2022 rental agreement noted that Victory Lane snow removal is split by lessee and lessor.

From the above, the Commission finds that in the early years of the tenancy the responsibility of snow removal was to be born entirely by the Tenants and the addendum

served merely to notify them of the cost and when it must be paid. In later years, and when the cost of snow removal rose, the responsibility of snow removal was to be shared between Landlords and Tenants, which was noted in the written rental agreements. The Commission does not agree with the findings of the Director that the cost of snow removal was therefore an included service in the rental agreement.

Accordingly, it may be said that the Director was in error in requiring the Landlords to pay the Tenants the sum of $382.50. However, the Commission will not disturb this finding, as the Landlords did not file a cross-appeal. The Landlords also stated at the hearing of the appeal that they agreed with the Director's Order, and that they had already paid the ordered sum of $382.50 to the Tenants.

Storage Space

Mid-way through the tenancy, the Tenants began renting part of an outbuilding owned and shared by the Landlords. Prior to this arrangement, the Tenants were renting a storage off-site. The Landlords eventually gave notice that the arrangement for on-site storage would be coming to an end, and the Tenants stopped paying for the storage space. The Tenants believe that the addition, and subsequent removal, of the storage space from the rental agreement was improper. They wish to be reimbursed for part of their expenditure as a result, as they believe it amounts to an illegal rent increase.

The Commission agrees with the findings of the Director that no return of rent is justified. The first page of the July 1, 2021 rental agreement identifies the residential premises as a single family home. While the July 1, 2021 rental agreement does reference storage, it is in an added "Notes;" section after the signatures and states:

- *Tenant also rents a small portion of the garage for storage etc. & pays $200 per month.*

Accordingly, the Commission finds that the rental of a portion of the Landlords garage was a separate matter extending beyond the residential tenancy. The Commission notes that when the storage facility was no longer available, the Tenants no longer had to pay $200.00 per month for storage.

The Commission therefore confirms the outcome of Director's Order LD23-049.

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. The outcome of Director's Order LD23-049, namely payment of $382.50 by the Landlords to the Tenants, is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, this 22nd day of March, 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.