



Docket: LR23017
Order: LR23-16

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act* (the “Act”), filed by Jonathan Seip, against Order LD23-094 issued by the Director of Residential Rental Property, dated March 14, 2023.

BEFORE THE COMMISSION ON Thursday, May 4, 2023.

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

Hearing Date: Wednesday, May 3, 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 permitting the early termination of a rental agreement.

BACKGROUND

Tara Arsenault (“Ms. Arsenault”) and Jonathan Seip (“Mr. Seip”) entered into a written fixed term agreement for the premises located at 1488 Route 124, in Abrams Village, PE (the “Premises”). The term of the agreement was from September 1, 2022 to June 29, 2023.

In November 2022, Ms. Arsenault informed Mr. Seip that she wished to terminate the rental agreement early. On January 17, 2023, she filed an application (Form 2) with the Director of Residential Rental Property (the “Director”) seeking an order to authorize the termination of the rental agreement. Ms. Arsenault vacated the premises on January 27, 2023.

In Order LD23-094 dated March 14, 2023, the Director granted Ms. Arsenault’s application and ordered that the rental agreement terminate effective February 28, 2023.

Mr. Seip appealed.

The Commission heard the appeal by way of telephone conference call on May 3, 2023. Mr. Seip and Ms. Arsenault both participated in the hearing.

Disposition

The appeal is dismissed.

Issue

Did the Director err in permitting the early termination of the rental agreement?

Analysis

The Commission heard submissions from both Mr. Seip and Ms. Arsenault.

Mr. Seip’s main contention is that the rental agreement should not have been allowed to be terminated before the end of the term, as she had committed to staying for the duration of the term and had signed a Form 3 to that effect.

Ms. Arsenault testified that, immediately upon providing Mr. Seip with notice that she wished to terminate the rental agreement, she undertook to find a suitable candidate to whom she could sublet the Premises. She testified that she filed the Form 2 when she suspected that Mr. Seip was not cooperating with her attempts to find a new tenant to assume the balance of her rental agreement.

The evidence clearly establishes that Ms. Arsenault was taking steps to identify an appropriate candidate to assume her rental agreement by way of sublet. The evidence further establishes that Mr. Seip was, at best, not taking any steps to assist Ms. Arsenault in securing a sublet for the Premises. Indeed, the record shows he only began screening possible candidates after the hearing before the Director. The Premises remains vacant today.

Mr. Seip submitted that there is no obligation on a landlord to assist a tenant in finding a suitable candidate for sublet. Mr. Seip is not entirely correct in this regard.

Section 6, clause 5 of the *Act* specifies that, though a tenant must have consent of a landlord to sublet a premises, that consent “will not unreasonably be withheld” by the landlord. Further, section 29 of the *Act* states as follows:

29. Mitigation

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.

Mr. Seip has an obligation to mitigate his damages. Ms. Arsenault has provided ample evidence of her significant effort to secure a new tenant to assume the balance of the term of her rental agreement. There was, and continues to be, interest from prospective tenants in this Premises. Mr. Seip provided no cogent or credible reasons to the Commission as to why he has not granted Ms. Arsenault consent to sublet the Premises, nor has he provided evidence of any sincere efforts towards mitigating his losses. The Commission is not satisfied that Mr. Seip has met his obligations under that *Act*.

For these reasons, the appeal is dismissed.

The Commission notes that Mr. Seip made submissions on the basis of the newly proclaimed *Residential Tenancy Act*, RSPEI Cap. R-13.11. However, as this application was filed before the coming-into-force of new legislation (being April 8, 2023), the provisions of the *Rental of Residential Property Act* continue to apply.

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 LD23-094 is confirmed.

DATED at Charlottetown, Prince Edward Island, this 4th day of May, 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.