



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: August 23, 2023

Docket: LR23045

Type: Rental Appeal

INDEXED AS: Cheng & Liang City United Ltd. v. Aiswarya Raj

Order No: LR23-42

BETWEEN:

Cheng & Liang City United Ltd.

Appellant

AND:

Aiswarya Raj

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-Chair
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on August 16, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that the balance of a security deposit be returned to a Tenant.

2. BACKGROUND

2. On December 1, 2022, Cheng & Liang City United Ltd. (the “Landlord”) entered into a written fixed term rental agreement for the premises located at 156 Upper Prince Street, Charlottetown, PE (the “Premises”) with Aiswarya Raj (the “Tenant”). Rent for the Premises is \$1,800 per month. The Tenant also paid a security deposit in the amount of \$1,800.
3. The Tenant vacated the Premises on February 28, 2023.
4. On March 14, 2023, the Tenant filed with the Director a Form 2 (“the “Application”) requesting the return of the security deposit. Attached to the Application was a Notice of Intention to Retain Security Deposit (the “Notice”) setting out that the Landlord is seeking to retain \$150 from the security deposit.
5. On March 30, 2023 the Landlord provided \$150 to the Rental Office to be held in trust.
6. In Order LR23-270 dated June 16, 2023, the Director ordered that the Tenant receive the security deposit held in trust by the Rental Office and that payment be made after the expiration of the appropriate appeal period.
7. On June 23, 2023, the Landlord filed an appeal with the Commission.
8. As this matter commenced prior to April 8, 2023, the *Residential Rental Property Act* (the “RRPA”) applies to this appeal.
9. The Commission heard the appeal by way of telephone conference call on August 16, 2023. The Landlord was represented by Xiong Liang Chen (“Mr. Chen”) who was accompanied by William Li (“Mr. Li”) who provided translation services. The Tenant also participated and represented herself.

3. DISPOSITION

10. The Commission dismisses the appeal and Order LD23-270 is confirmed.

4. ANALYSIS

11. The *Rental of Residential Property Act* (subsection 10(5)) permits a landlord to retain all or part of a security deposit where they believe the tenant is liable to the landlord for a breach of statutory condition 4, being the tenant’s obligation to maintain ordinary cleanliness and repair damage.

12. The onus is on the Landlord, when seeking to retain the security deposit, to establish that the tenant(s) failed to satisfy this obligation.
13. In this case, the Landlord claims that when the Tenant moved out of the Premises, she left behind bags of garbage outside the apartment. The documentary evidence includes text message exchanges between the Landlord and Tenant, dated March 13, 2023, wherein the Landlord asks the Tenant to remove the garbage that same day. Later that evening, the Tenant responded “we have cleaned the garbage that was ours.” The remainder of the text message exchange, entered into evidence by the Tenant, indicates that the Landlord later replied directing the Tenant to “clean all the garbage”.
14. The Landlord alleges that the Tenant put the garbage in the bin of a nearby restaurant, and the restaurant contacted the Landlord’s agent to remove the garbage. The Landlord submitted a receipt from Island Waste Management Corporation for \$12 for “residential waste” and a typewritten receipt for \$350 for “moving stuff from 156 Upper Prince Street”.
15. The Landlord also provided photographs of the Premises which they say demonstrates the Tenant left garbage outside and did not clean inside the house. However, the Commission notes that none of the photographs are dated.
16. At the hearing, the Tenant testified that she cleaned the Premises before she vacated and that she removed the garbage when asked. She testified that she believed the Landlord was trying to charge her for the cleaning fee he was required to pay because he was selling the Premises. The Tenant also submitted into evidence a statement indicating that she was only in the Premises for two months and some of the alleged damages and uncleanliness may have been from the previous tenant.
17. Based on the evidence, in particular the March 13th text message exchange between the parties, the Commission accepts that the Tenant may have left some garbage behind at the Premises. However, the Commission also accepts that the Tenant returned to the Premises to remove any garbage that was hers.
18. While the Landlord did provide photographs of garbage left behind and a message from the nearby restaurant, the Commission finds that there is a lack of evidence connecting the Tenant to that particular garbage.
19. For these reasons, and based on a review of the evidence as a whole, the Commission finds that the Landlord has not met their onus to establish that the Tenant failed in her obligation to maintain ordinary cleanliness of the Premises.

5. CONCLUSION

20. For these reasons, the Commission dismisses the appeal. Order LD23-270 is confirmed.

IT IS ORDERED THAT

1. The appeal is dismissed. Order LD23-270 is confirmed.

DATED at Charlottetown, Prince Edward Island, Wednesday, August 23, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

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.