



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LR21004
Order LR21-09**

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Aiqun “Katherine” Han against Orders LD21-030, LD21-031 and LD21-032, dated January 26, 2021, issued by the Director of Residential Rental Property.

BEFORE THE COMMISSION

on Friday, the 1st day of April, 2021.

Erin T. Mitchell, Panel Chair & Commissioner

M. Douglas Clow, Vice-Chair

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

IN THE MATTER of an appeal under subsections 25(2) and 26(1) of the *Rental of Residential Property Act* filed by Aiqun “Katherine” Han against Orders LD21-030, LD21-031 and LD21-032, dated January 26, 2021, issued by the Director of Residential Rental Property.

Order

This appeal asks whether a landlord is permitted to retain all, or a portion, of a tenant’s security deposit.

Background

Order LR21-030

The Appellant, Aiqun “Katherine” Han (“Ms. Han”), entered into a rental agreement with the Respondent, Zihui Zhang (“Mr. Zhang”) for premises located at 2 Forest Drive, Charlottetown, PE (the “Premises”). Mr. Zhang moved into the Premises on December 2, 2019. A security deposit of \$2,400 was paid to Ms. Han. Mr. Zhang vacated the Premises on September 20, 2020.

On November 16, 2020, a Notice of Intention to Retain Security Deposit (“Form 8”) was mailed to Mr. Zhang by the Office of the Director of Residential Rental Property (the “Director”) which stated that Ms. Han would be retaining the security deposit for unpaid utility bills and damage to the Premises.

On November 16, 2020, Mr. Zhang filed with the Director a Form 9 – Application re Determination of Security Deposit (“Form 9”).

On December 10, 2020, the Director received the security deposit funds, plus accrued interest, from Ms. Han in the amount of \$2,422.05.

The Director heard the matter on January 6, 2021, and in Order LD21-030 ordered that Ms. Han receive \$343.49 of the security deposit funds and Mr. Zhang receive the balance in the amount of \$2,078.56.

Order LR21-031

On November 26, 2020, Ms. Han filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (“Form 2”) seeking a monetary claim against Mr. Zhang in the amount of \$4,203.04 representing unpaid utility bills and damage to the Premises.

The Director heard the matter on January 6, 2021, and in Order LD21-031 dismissed the Form 2 as the Director does not have jurisdiction to issue a monetary order above the security deposit amount.

Order LD21-032

On December 7, 2020, Mr. Zhang filed an Application for Enforcement of Statutory or Other Conditions of Rental Agreement ("Form 2") seeking a return of rent from Ms. Han in the amount of \$14,863.60 as well as a return of the security deposit in the amount of \$2,400.

The Director heard the matter on January 6, 2021, and in Order LD21-031 ordered that Ms. Han pay Mr. Zhang \$436.60 representing the value of excess furnace oil and propane paid by Mr. Zhang.

Ms. Han attached all three Orders to the Notice of Appeal form. However, her reasons for appeal, pre-hearing evidence and submissions only appeared to have dealt with Order LD21-030.

The Commission heard the appeal on March 23, 2021, by way of telephone conference call with the parties. Frank Li spoke for the Appellant. Jian Wang spoke for the Respondent. A translator, William Li, assisted the parties and the Commission.

Both parties only spoke to the subject matter of Order LD21-030, that is to say the matter of the retention of the security deposit.

Disposition

The Commission finds that the Appellant did not intend to appeal Orders LD21-031 and LD21-032 as these Orders were neither referenced in the reasons attached to the Notice of Appeal nor addressed in evidence and submissions before the Commission.

Order LD21-030 is the subject of this appeal as it was referenced in the reasons attached to the Notice of Appeal and the subject matter of this order was addressed at the hearing. After having reviewed the evidence and testimony presented by both parties, the Commission dismisses the appeal.

The Issue

The Commission will consider whether the Appellant landlord is entitled to receive all of, or a greater portion of, the security deposit.

Analysis

The parties entered into a written, fixed-term rental agreement for the period October 21, 2019 to October 20, 2020. The Premises consist of a single-family home with attached garage. The Respondent tenant moved into the Premises on or about December 2, 2019, and moved out on or about September 20, 2020.

The Appellant seeks to retain the entire security deposit of \$2,400. With interest, this sum is now \$2,422.05.

The Appellant makes claims for damage and unpaid utilities bills, all of which are itemized in Order LD21-030. The total monetary claim exceeds the security deposit with interest.

There is no report or checklist in evidence which would establish the condition of the Premises when the Respondent moved in. Likewise, there are no date stamped photographs in evidence to establish the condition of the Premises when the Respondent moved in.

The onus is on a landlord to establish that claimed damage occurred during the occupation of the tenant. While the condition of the Premises after the Respondent moved out is well established, the lack of objective evidence as to the condition of the Premises at the time the Respondent moved in results in both the Director, and the Commission, having no reference point to establish how much, if any, damage occurred during the term of the tenancy.

The Appellant has provided new evidence in Exhibit E-24. While this new evidence seeks to further explain and quantify the damage claim, it does not provide a reference point as to the condition of the Premises when the Respondent first moved in. Simply put, it is not helpful to the appeal.

The evidence of both parties tended to be fixated on various scratches. The Respondent acknowledges some minor damage occurring during the tenancy, such as to the wall of one bedroom. Other damage was described by the Respondent as pre-existing, such as damaged to a wall of a different bedroom and to the terrace doors. Other damage was ascribed to normal wear and tear.

The Appellant claimed for the cost of further cleaning, especially in the kitchen, but no objective evidence [condition report, photographs] established the standard of cleanliness at the time the Respondent moved in to the Premises.

Section 6, Statutory Condition 4 of the *Rental of Residential Property Act* reads:

STATUTORY CONDITIONS

6. Residential premises

Notwithstanding any agreement, waiver, declaration or other statement to the contrary, where the relationship of lessor and lessee exists in respect of residential premises by virtue of this Act or otherwise, there shall be deemed to be a rental agreement between the lessor and lessee, with the following conditions applying as between the lessor and lessee as statutory conditions governing the residential premises:

...

4. Obligation of the Lessee

The lessee shall be responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by any wilful or negligent act of the lessee or of any person whom the lessee permits on the premises, but not for damage caused by normal wear and tear.

[Emphasis added].

The Director awarded the sum of \$343.49 to the Appellant landlord from the security deposit. Given the evidence of both parties, and the lack of objective evidence to establish the condition of the Premises on the date the Respondent tenant moved in, the Commission finds the Director's decision to be reasonable. Accordingly, the appeal of Order LD21-030 is dismissed.

While Directors Orders LD21-031 and LD21-032 were physically attached to the Notice of Appeal, the subject matter of these two Orders was not referred to during the hearing before the Commission. Given that the Schedule "A" (which sets out the reasons for the appeal) attached to the Notice of Appeal refers only to Order LD21-030, the Commission finds that the Appellant never intended to appeal Orders LD21-031 and LD21-032.

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. **Orders LD21-030, LD21-031 and LD21-032 are confirmed.**

DATED at Charlottetown, Prince Edward Island, this 1st day of April, 2021.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Erin T. Mitchell, Panel Chair &
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* provide 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.