



Date Issued: August 13, 2024
Dockets: LR24043
Type: Rental Appeal

INDEXED AS: Peace Property Management Company Ltd. v. Renato Pablo Sandoval Loubies
Order No: LR24-48

BETWEEN:

Peace Property Management Company Ltd. (the "Landlord")

Appellant

AND:

Renato Pablo Sandoval Loubies (the "Tenant")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
Cynthia McCardle, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on July 9, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Landlord must pay the Tenant double the security deposit balance plus interest, in the total amount of \$5,454.37.

B. BACKGROUND

2. On February 22, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Tenant's Application") with the Residential Tenancy Office (the "Rental Office") seeking a monetary order for double the security deposit, in the amount of \$5,400.00 plus interest.
3. On April 23, 2024 the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the "Landlord's Application") with the Rental Office seeking outstanding rent and compensation exceeding the security deposit, in the total amount of \$7,125.00.
4. On May 2, 2024 the Tenant, the Tenant's witness, the Tenant's interpreter, the articling clerk for the Landlord (the "Clerk"), the Landlord's representative (the "Representative"), and the Landlord's two witnesses participated in a teleconference hearing before the Residential Tenancy Officer (the "Officer") for determination of the Applications.
5. Order LD24-180 order that the Landlord must pay the tenant \$5,454.37 which is double the security deposit balance plus interest.
6. The Landlord appealed Order LD24-180 on June 20, 2024.
7. The rental property is a single family home. The parties entered into a written tenancy agreement for the period of September 18, 2023 to April 30, 2024. A search of the Prince Edward Island Corporate registry indicates that Thi Tuyet Tran is the Director, President, Secretary, Treasurer and one of several shareholders.
8. The Commission heard the appeal on July 9, 2024, by way of telephone conference. Maximillian Auwaerter, Counsel, represented the Landlord Peace Property Management Company Inc. and Tuyet Tranthi, also known as Tuyet (Sunny) Tran ("Ms. Tranthi"), the Landlord's representative also participated. The Tenant Renato Pablo Sandoval Loubies attended along with his spouse, Janet Cisterna. Ryan MacRae, attended as interpreter for the Tenant.

C. DISPOSITION

9. The appeal is dismissed and Order LD24-180 is confirmed, subject to an updating of the interest payable by the Landlord to the Tenant.

D. SUMMARY OF EVIDENCE

10. Counsel for the Landlord submitted that the key focus for the appeal was whether the January 3, 2024 email from Ms. Tranthi constituted a termination of the tenancy agreement by the Landlord. Counsel submitted that this email was a start for negotiations, there was not yet a meeting of the minds and Ms. Tranthi had requested confirmation the Tenant would move out on January 31 as well as a confirmation of a date and time for the move out inspection. Counsel submits that the January 3, 2024 email was asking for more and better terms and did not terminate the agreement. As the Landlord had not agreed to terminate the tenancy agreement, the tenancy ended at the end of the tenancy agreement, specifically April 30, 2024.
11. Counsel also submitted that the home had a bad smell, described as the smell of a dog, when Ms. Tranthi inspected it after the tenant and his family vacated the home. Counsel noted that the home had yearly inspections as a licensed tourist operation and these inspections were very positive. Therefore, he submitted that the Tenant and his family had in some way caused the smell.
12. Ms. Tranthi testified that the home is thoroughly cleaned between tenants for both short term tourist accommodation and longer term off season rentals. She further testified that she was in the home at the first of February 2024 and it was not cleaned properly. Ms. Tranthi was advised by the Tenant that he would be back the next day but he did not come back. The remote for the garage door was not returned when the Tenant first moved out. It was returned on February 15, 2024. She is seeking rent for the months of February and April 2024 as she was able to rent the home short term for the month of March 2024. She is also seeking further damages in the form of 50% of the cost of painting the home as well as 2 days to clean the home.
13. The Tenant testified that his December 29, 2023 email to Ms. Tranthi was clear, stating that they would leave the home, giving one month's notice and delivering the home to Ms. Tranthi on February 1, 2024 and requested a return of the security deposit. The Tenant stated that the January 3, 2024 email from Ms. Tranthi was also clear, accepted the termination of the tenancy and stated the deposit would be returned after an inspection.
14. The Tenant stated that the smell was present when they moved in to the home and they returned the home in the same condition that they had received it. He stated that after the February 1, 2024 inspection he was not informed of any damage until the hearing before the Rental Office in early May 2024.

E. ANALYSIS

15. The tenancy agreement specified a termination date of April 30, 2024 and ordinarily a tenant would not be entitled to early termination with one month's notice. However, a landlord may grant an early termination.
16. Before determining that the January 3, 2024 email from Ms. Tranthi to the Tenant was in fact an early termination granted by the Landlord, it is helpful to examine the sequence of communication between the parties from December 29, 2023 to January 3, 2024.

17. Exhibit E-13, found at page 49 of the Commission evidence package, is a letter dated “December 29” addressed to “Sunny” from the Tenant. After three background paragraphs, the Tenant writes:

The reason for this letter is to inform you that we have made the decision to leave the house that you currently rent to us, we give you 1 month's notice. We will deliver your unique property at 87 Mason Road in Stratford - PEI, on February 1, 2024. We will also coordinate and consider the return date for the month's security requested at that time. I appreciate you renting your house to us, which we have cared for and kept in optimal condition.

18. Exhibit E-8 at page 20 of the Commission evidence package (see also pages 60 to 62 where it is reproduced as a series of screenshots submitted by the Landlord) contains an email, dated December 29, 2023 addressed to Tuyet Tranthi from the Tenant and copied to the Tenant’s spouse. This email begins “Dear Sunny,” and, aside from some word confusion (“renting from us” as opposed to “rent to us”) uses similar wording to the “December 29” letter. The key paragraphs read:

The reason for this letter is to inform you that we have made the decision to leave the house you are currently renting from us, I give you 1 month's notice in advance. We will deliver your property on February 1, 2024. Also coordinate and consider the return date of the requested warranty month at the time.

I thank you for renting us your house, which we have cared for and maintained in optimal conditions.

19. The Commission finds that, in both the email and the letter, the Tenant has communicated to Ms. Tranthi that they wish to leave the house, will turn over possession on February 1, 2024 and expect the security deposit to be returned.

20. In Exhibit E-17, page 63, is a screenshot of a December 29, 2024 response from Ms. Tranthi to the Tenant:

Hi Renato,

Please note this is a fixed term rent from Sept 18 2023 to April 30 2024. You are allowed to move out with 30 days notice if you finish your lease or one year lease. Please read pei renting rules for more the details. I'm on vacation to visiting my parents until Jan 11 so I can't help.

Please respect the lease that you signed. Have a good day!

As the pei renting

Tuyet (Sunny) Tran

Owner / Operator

Cel: [deleted by the Commission for privacy]

21. On Exhibit E-17, page 64, the Tenant replies:

Dear Sunny,

I understand the fixed-term contract but I want you to understand me. Given the situation on the island of not having major housing offers and the limited job opportunities, I have the need to look for a cheaper rental with long-term terms for family stability, otherwise I will not be able to continue fulfilling my obligations and that is precisely what I don't want to, my intension is to be responsible and that's how I have been until now.

Best Regard

Renato Sandoval

22. Ms. Tranthi then writes on January 3, 2024 (see screenshot page 65 and printed email page 19):

Hello Renato,

I have received your rent for the month of January.

Please confirm that you will move out on January 31. Your deposit will be returned after we have done the move out inspection. Please note that I am very disappointed that this has happened, but I do not want to make a big deal out of it. Please do not forget to clean the house carefully and return the house in the same condition as when you received it. Please confirm a date and time for your move-out inspection.

23. The Commission finds that the Tenant on December 29, 2023 asked for an early termination surrendering possession on February 1, 2024. The Landlord on the same day promptly informed the Tenant that the terms of the lease must be followed. The Tenant then responded the same day stating he understood the nature of a fixed term contract but he went on to set out his rationale for ending the lease early. The Landlord then responded on January 3, 2024 asking for confirmation and noting her disappointment "... but I don't want to make a big deal out of it."

24. The Commission finds that the January 3, 2024 email from the Ms. Tranthi, especially in the context of the preceding email chain, constitutes an acceptance by the Landlord of an early termination of the tenancy agreement on January 31, 2024.

25. Counsel argued at the hearing that the January 3, 2024 was conditional on receiving confirmation of the move out date and setting a date and time for inspection. The Commission agrees with the Rental Officer when he stated at paragraphs 66 and 67:

[66] The Officer does not accept the Representative's submission that there was no valid agreement unless the Tenant provided confirmation that he would be moving out of the Unit. Based upon the contents of the December 29, 2023 email, it was already apparent that the Tenant would be moving out on January 31, 2024.

[67] Further, if the Representative had wanted Tenant confirmation as a condition of a valid agreement, then the Representative needed to use mandatory language along with a deadline for confirmation. For instance, the Representative could have stated "You must reply to me by [date] confirming that you will move out of the Unit by January 31, 2024 or there is no valid agreement to terminate the tenancy agreement."

26. Accordingly, the Commission finds that the Landlord accepted, albeit reluctantly, and early termination of the rental agreement with a termination date of January 31, 2024. Accordingly, the Commission finds that the Tenant does not owe rent for the months of February and April 2024 claimed by the Landlord.
27. With respect to the Landlord's offset claim for alleged damage, an alleged lack of cleanliness and an alleged unpleasant smell, the Commission agrees with the Rental Officer that the Landlord failed to provide sufficient evidence to establish a baseline condition for the home at the time the Tenants moved in.
28. With respect to the return of the security deposit, the Commission has already found that the tenancy agreement was terminated on January 31, 2024. The Commission agrees with the Rental Officer that the Landlord did not comply with section 40 of the *Residential Tenancy Act* (the "Act"). The Commission has made it abundantly clear to landlords on numerous past appeals filed since the Act came into force that a failure by a landlord to comply with the requirements of section 40 of the Act will result in serious consequences for that landlord and neither the Rental Office or the Commission has any power to temper, ease or show mercy to landlords in this regard. Section 40, as is the entire Act, is the creation of the Legislative Assembly of Prince Edward Island and both the Rental Office and the Commission must follow the law as created by the Legislature. Unlike the Courts, the Rental Office and the Commission do not possess inherent jurisdiction and only have the powers granted under the Act, and in the case of the Commission, also granted under the *Island Regulatory and Appeals Commission Act*.
29. Accordingly, the Commission agrees with the Rental Officer that the security deposit of \$2,700.00 was to be doubled per subsection 40(4) of the Act, with interest payable on the original security deposit from the date the security deposit was paid, July 31, 2023 until the decision date. In the case of Order LD24-180, the decision date was June 4, 2024. As a result of the appeal before the Commission, the Commission decision date is August 13, 2024 and therefore the interest payable is based on the period July 31, 2023 to August 13, 2024.

F. CONCLUSION

30. The appeal is dismissed. Order LD24-180 is confirmed, with the award of \$5,454.37 increased to \$5,465.99 due to the interest accrual period being extended to the date of the Commission Order.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-180 is confirmed.
3. The Landlord must pay the Tenant double the security deposit together with interest on the original amount of the security deposit.
4. The interest accrual period is extended to the date of the Commission Order.
5. The Landlord shall pay the sum of \$5,465.99 to the Tenant within 15 days of the date of this Order.

DATED at Charlottetown, Prince Edward Island, 13th day of August, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(sgd. Cynthia McCardle)

Cynthia McCardle, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11, on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.