



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: June 15, 2023

Docket: LR23031

Type: Rental Appeal

INDEXED AS: Mohammed Rahman Khan v. Sandcliffe Properties Ltd.

Order No: LR23-23

BETWEEN:

Mohammed Rahman Khan

Appellant

AND:

Sandcliffe Properties Ltd.

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair
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 June 14, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the "Director") erred in finding that an eviction notice was valid.

2. BACKGROUND

2. Mohammed Rahman Khan ("Mr. Khan") rents Apartment #4, 230 University Avenue, Charlottetown, PE (the "Premises"), from Sandcliffe Properties Ltd. (the "Landlord"). Rent is \$1200.00 per month and is due on the first day of the month.
3. On March 28, 2023, Mr. Khan was served with a Notice of Termination by Lessor of Rental Agreement pursuant to subsection 14(1)(a) of the Act (the "Form 4"). The effective date of the Form 4 was April [illegible], 2023.
4. On April 11, 2023, Mr. Khan filed with the Director a set aside application (the "Application").
5. In Order LD23-211 dated May 16, 2023, the Director denied the Application and ordered that the rental agreement be terminated effective May 26, 2023, at 11:59 p.m. and that a certified copy of the Order could be filed with the Supreme Court and enforced by Sheriff Services as permitted by the Act.
6. Mr. Khan appealed the Order.
7. As this matter commenced with the service of a Form 4 prior to April 8, 2023, the *Rental of Residential Property Act* (the "RRPA") applies to this appeal. Clause 14.(1)(a) and statutory condition 3 of section 6. are germane to this appeal.
8. The Commission heard the appeal on June 14, 2023. Mr. Khan participated and called his roommate, Mr. Madhavendra, as a witness. The Landlord was represented by Brett Poirier of Red Sands Property Management.

3. DISPOSITION

9. The appeal is dismissed and Director's Order LD23-208 is confirmed, subject to a revised termination date.

4. ANALYSIS

10. Mr. Khan stated that the Landlord's accusations "have no value". Mr. Khan stated that he has been living in the Premises for 1.5 years. Early in the tenancy, he contacted the Landlord to raise various issues regarding the safety and condition of the Premises. He submits that after doing that he has been getting a "hard time" with the Landlord sending him "notice on top of notice". He feels the Landlord is biased to evict him because he raised concerns about safety and condition of the Premises. He stated that in March 2023,

Mr. Madhavendra became his new roommate. On March 2, 2023, the first noise complaint was received and after a visit from the Police the music volume lowered. Two weeks later a birthday was being celebrated, friends were invited and things got loud. The Police were called and visited the Premises to tell them to keep the noise down. Mr. Khan said they complied with the direction of the Police and turned down the volume of the music. Later this same night other friends of Mr. Khan and his roommate arrived to join the party and were on the balcony with “a speaker on” near a neighbouring tenant’s apartment. That tenant called the Police again and the Police arrived. Mr. Khan feels that his eviction for these noise complaints is unfair, as he never received a written warning from the Landlord. Mr. Khan maintains that the sounds of screaming and fighting came from another apartment. He submits that there were no noise complaints before March 2, 2023 or after March 13, 2023. With respect to the MacArthur’s invoice, submitted by the Respondent, noting loud music, Mr. Khan stated it is “just his word against mine”.

11. Mr. Madhavendra gave brief testimony and stated that a “repair guy” came about two months ago to look at the windows and “kitchen stuff” but did not fix them. Mr. Madhavendra did not speak to the issues that are germane to this appeal.
12. On behalf of the Respondent, Mr. Poirier stated that there were complaints from neighbours about noise as noted in the three incidents described in the police report: March 2, 2023, at 22:25 HR and two occasions on March 13, 2023, at 21:17 HR and again on the same night at 22:31 HR, when the Police issued a bylaw ticket for noise and advised Mr. Khan to keep the noise down. A neighbour had called the police and thus those complaints were independent of the Landlord. The Police provided a letter confirming the noise complaints, the visits to the Premises, and the action taken - including the issuing of a noise bylaw ticket. There was only one hour and fifteen minutes between the second incident and the third incident. Mr. Poirier also stated that he was advised that DJ music equipment had been seen set up in the apartment. A May 2, 2023 MacArthur’s Appliance invoice for repairs to the kitchen stove performed on April 27, 2023, stated “Also noticed tenants making excess noise in unit playing music”. Mr. Poirier observed that approximately six minutes into the audio recording submitted by Mr. Khan (Exhibit E-15) the neighbouring tenant speaking with Mr. Khan stated that the noise from the Premises was still occurring.

13. Clause 14.(1)(a) of the RRPA reads:

The lessor may also serve a notice of termination upon the lessee where

(a) statutory condition 3 or 4, or any other term of rental agreement has been breached, other than failure to pay rent;

14. Statutory condition 3, found in section 6. of the RRPA, states:

The lessee and any person admitted to the premises by the lessee shall conduct themselves in such a manner as not to interfere with the possession, occupancy or quiet enjoyment of other lessees.

15. The rental agreement, "...to begin on 01-Dec-21", contains the following clause in addition to the standard form rental agreement:

THE LESSOR AND LESSEE AGREE TO THE FOLLOWING ADDITIONS TO THE AGREEMENT:

...

9. Not make loud noises or to play musical instruments, stereo, radio, or television sets that would cause disturbance to other tenants within the property, or to neighbouring properties at any time of day.

16. The March 22, 2023 report from Charlottetown Police Services sets out the name of the complainant and details three specific visits (March 2, 2023 and two on March 13, 2023) to the Premises. The Commission finds that this police report is objective and reliable evidence.
17. The RRPA requires a lessee and persons admitted to the premises to respect the quiet enjoyment of other tenants. The specific rental agreement attaches a clause which makes very clear that audio disturbances to other tenants and to neighbours are not permitted. The Commission finds that Mr. Khan or those he admitted to the Premises have breached the RRPA and a specific clause of the rental agreement prohibiting loud noise on at least three occasions.
18. The Commission agrees with the findings made by the Director in Order LD23-211. Accordingly, the appeal is dismissed and Director's Order LD23-211 is confirmed, subject to a new termination date and time of June 30, 2023, at 5:00 p.m.

5. CONCLUSION

19. The Commission has determined that the Director was correct in terminating the rental agreement.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Director's Order LD23-211 is confirmed, subject to a variation in the date and time of termination.
3. The rental agreement between the parties shall terminate effective 5:00 p.m. on June 30, 2023.
4. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Rental of Residential Property Act*.

DATED at Charlottetown, Prince Edward Island, Thursday, June 15, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie ,K.C.)

J. Scott MacKenzie, K.C., Chair

(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.