



Date Issued: July 5, 2023
Docket: LR23038
Type: Rental Appeal

INDEXED AS: David Turner v. Peace Property Management Company Ltd.
Order No: LR23-29

BETWEEN:

David Turner

Appellant

AND:

Peace Property Management Company Ltd.

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C., 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 July 5, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the rental agreement should be terminated and that rent is due and owing.

2. BACKGROUND

2. (a) In June, 2020, David Turner (the "Tenant"), entered into a rental agreement for the premises located at Apartment #112, 16 Elena Court, Charlottetown, PE (the "Premises") with Peace Property Management Company Ltd. (the "Landlord"). Rent for the Premises is \$1,272.60 per month with a security deposit paid of \$1,260.00.

(b) On April 26, 2023, the Landlord filed with the Rental Office an Application to Determine Dispute (the "Application") seeking an order that the Tenant pay outstanding rent for the month of April, 2023, in the amount of \$1,351.91; an order that the Tenant vacate the rental unit; and ordering the Sheriff to put the Landlord in possession of the Premises.

(c) Attached to the Application was a notice of termination (the "Notice") dated April 5, 2023, effective April 25, 2023.

(d) On May 4, 2023, the Tenant filed an Application to Dispute by Tenant ("Form 2A"). The Form 2A was filed to dispute a second notice of termination (the "Second Notice") dated May 3, 2023, effective May 30, 2023. The Second Notice was served on the Tenant by the Landlord for non-payment of May, 2023 rent.

(e) In Order LD23-233 the Rental Office that the Notice and Application were valid and ordered the termination of that rental agreement effective 12:59 p.m. on May 31, 2023; and that the Tenant pay the Landlord forthwith the sum of \$1,624.50 representing outstanding rent for April and May, 2023.

(f) The Tenant filed an appeal with the Commission.

(g) The Commission heard the appeal on July 5, 2023, by way of telephone conference call. The Tenant represented himself. The Landlord was represented by Tuyet "Sunny" Tran ("Ms. Tran"). Eric Elseward ("Mr. Elseward") testified for the Landlord.

3. DISPOSITION

3. The Commission dismisses the appeal and confirms the decision of the Rental Office in Order LD23-233, subject to a variation in the rental agreement termination date.

4. ANALYSIS

4. The Tenant stated that his rent is now paid up until the end of June 2023 as he paid \$1,272.60 for June 2023 and has also paid the rent owing for previous months. He acknowledges that his rent has not been paid for the month of July, 2023. He denies owing an additional \$104.00. He described circumstances beyond his control which resulted in late payment of the rent. He further described additional circumstances beyond his control which have left him unable, for now, to pay his rent for July 2023. He stated that the earliest he might be able to pay his July, 2023 rent would be July 20, 2023.
5. Ms. Tran stated that some rent was paid in June, 2023; however, it was \$104.00 short of the total amount owed. Mr. Elseward explained that the amount the Tenant paid in June was \$104.00 less than the \$1,624.50 set out in Order LD23-233. Mr. Elseward also stated that the monthly rent of \$1,272.60 for June rent was paid before the end of that month.
6. Neither party provided copies of receipts or cheques for rent money paid after Order LD23-233 was issued and as such the Commission cannot determine the current rental arrears other than that it is at least \$1,272.60. Whether an additional \$104.00 is owing cannot be determined at this time.
7. The Rental Office found in Order LD23-233 that the first Notice of Termination (Form 4) was dated April 5, 2023, and the Tenant did not file a set aside application of that Notice and is therefore deemed to have accepted that Notice. The Rental Office also found that as that Notice was served on the Tenant prior to April 8, 2023, the legislation governing this appeal is the *Rental of Residential Property Act* (the "RRPA"). Neither party to the appeal challenged these findings in the appeal before the Commission.
8. The Commission finds that the Tenant continues to be in arrears of rent as he has not paid the rent for July, 2023. While the Tenant states he is presently unable to pay this rent, the RRPA does not allow late payment of rent even where it is due to circumstances beyond a tenant's control. Accordingly, the rental agreement is terminated as rent remains owing. The Commission has, however, varied the termination date to July 31, 2023 at 11:59 p.m. The Tenant remains responsible for paying rent for the month of July, 2023.

5. CONCLUSION

9. The rental agreement shall terminate on July 31, 2023 at 11:59 p.m.

IT IS ORDERED THAT

1. **The appeal is dismissed and Rental Office Order LD23-233 is confirmed subject to a new termination date.**
2. **The rental agreement shall terminate on July 31, 2023, at 11:59 p.m.**
3. **The Tenant remains responsible for paying rent for the month of July 2023.**
4. **A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, Wednesday, July 5, 2023.

BY THE COMMISSION:

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

J. Scott MacKenzie, K.C., Chair & CEO

(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.