



Date Issued: July 6, 2023
Docket: LR23036
Type: Rental Appeal

INDEXED AS: Elwood Coakes v. CAPREIT Apartment Inc.

Order No: LR23-30

BETWEEN:

Elwood Coakes

Appellant

AND:

CAPREIT Apartment Inc.

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 June 29, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that an eviction was valid.

2. BACKGROUND

2. (a) On December 1, 2014, Elwood Coakes (the “Tenant”) entered into a rental agreement for the premises located at 35 Belvedere Avenue, Unit #2, Charlottetown, PE (the “Premises”) with CAPREIT Apartment Inc. (the “Landlord”). Rent for the Premises is \$664.23 per month with a security deposit not required.

(b) In Director’s Order LD23-207 the Director ordered the termination of that rental agreement effective May 23, 2023, at 5:00 p.m., thus requiring the Tenant and all occupants to vacate the Premises.

(c) On May 30, 2023, the tenant filed an appeal with the Commission.

(d) The Commission heard the appeal on June 29, 2023, by way of telephone conference call. The Tenant represented himself. The Landlord was represented by John O’Brien (“Mr. O’Brien”).

3. DISPOSITION

3. The Commission dismisses the appeal and confirms Director’s Order LD23-207 subject to a revised termination date.

4. ANALYSIS

4. The Tenant acknowledged that a man, woman and a dog are presently occupying his apartment with him. He alleged they were staying with him in the Premises without his permission and that he is not able to get them to leave. However, his evidence is that he brought them to the Premises. There is also another individual’s name on the rental agreement and he occasionally stays at the Premises. As such, at times the Premises that is a one-bedroom apartment is occupied by up to four persons and a dog. The rental agreement provides that only two persons are approved to occupy the Premises. He testified that the man and woman have a volatile relationship and can be disruptive. The Tenant stated that he is not scared of them, but he later stated that they had threatened him. The Tenant stated that he does not know how to get rid of them as they have threatened to damage his car. The Tenant stated his rent is up-to-date.
5. Mr. O’Brien stated that the Tenant has people coming in and out all the time. There are burn marks on the carpet between the Premises, the laundry room and the storage room

he suggests have been made by persons admitted by the Tenant. He stated that other tenants are now avoiding the laundry room and he stated another tenant has reported that a man sometimes sleeps in the hallway of the storage room suggesting he was let in or provided a key by the Tenant. He stated the Tenant does not have permission to have a dog on the Premises.

6. Clause 14.(1)(a) of the *Rental of Residential Property Act* states:

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.

7. Statutory condition 3 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.

8. While the Tenant stated at the beginning of the hearing that he is not scared of the people who have occupied the Premises without his permission, he has testified that they have threatened to damage his property. In his handwritten statement (Exhibit E-6, page 13 of the file materials), he states that "I am a victim of these two people". The onus is on the Tenant to take steps to have those occupiers removed by the police and necessary orders issued for his own protection and the protection of others. By failing to take these steps, the Tenant is responsible for their behaviour.
9. Having reviewed the testimony presented at the hearing, as well as the documents on file, the Commission is satisfied that the presence of three and at times four adults plus a dog in a one-bedroom apartment, along with the behaviour, such as fighting, of the persons who occupy the Premises without permission, as well as the behaviour, such as sleeping in a storage room hallway, of the additional person who sometimes stays at the Premises, would interfere with the possession, occupancy, or quiet enjoyment of other lessees.
10. Accordingly, the Commission agrees with the finding of the Director that the rental agreement should be terminated, subject to a variation in the termination date.

5. CONCLUSION

11. The Commissions agrees with the Director that the circumstances warrant a termination of the rental agreement.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**

2. The rental agreement between the parties shall terminate at 5:00 p.m. on July 31, 2023, and the Tenant, the additional person listed on the rental agreement and any and all occupants together with the dog shall vacate the Premises by this date and time.
3. 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, July 6, 2023.

BY THE COMMISSION:

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

J. Scott MacKenzie, K.C., 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.