



Date Issued: July 6, 2023
Docket: LR23046
Type: Rental Appeal

INDEXED AS: Ashley Saunders v. Duane MacBeth
Order No: LR23-31

BETWEEN:

Ashley Saunders

Appellant

AND:

Duane MacBeth

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.

2. BACKGROUND

2. (a) In April, 2022, Ashley Saunders (the “Tenant”), entered into a rental agreement for the premises located at Apartment #5, 220 Euston Street, Charlottetown, PE (the “Premises”) with Duane MacBeth (the “Landlord”). Rent for the Premises is \$960 per month with a security deposit required and paid in the same amount.

(b) On May 23, 2023, the Tenant filed with the Rental Office an application to determine dispute (the “Application”). Attached to the Application was a Landlord Notice of Termination (“Form 4A”) dated May 17, 2023, effective June 17, 2023 (the “Notice”) citing a breach of s. 61.(1)(e) of the Residential Tenancy Act (the “Act”).

(c) In Order LD23-280 the Rental Office found that the Notice was valid, denied the Application and ordered the termination of that rental agreement effective 11:59 p.m. on June 30, 2023 and that the Tenant vacate the Premises by that time and date.

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

(e) The Commission heard the appeal on July 5, 2023, by way of telephone conference call. The Tenant represented herself. Aaron Gibson also participated to assist the Tenant. The Landlord was represented by Kevin Hobson (“Mr. Hobson”).

3. DISPOSITION

3. The Commission dismisses the appeal and confirms Rental Office Order LD23-280, subject to a variation in the termination date.

4. ANALYSIS

4. The Tenant testified that she intended to leave the Premises but needed more time to find other accommodations. She stated that even an extension to the end of the month would be helpful. She stated that she does not believe her behaviour in feeding the birds is wrong and that she is trying to stop feeding them. She stated she has not yet paid July’s rent as she is awaiting the Commission’s decision.
5. Mr. Hobson testified that the Landlord asked the Tenant on several occasions to stop feeding the birds and arranged to have a bylaw enforcement officer talk to her. Mr. Hobson indicated that the Landlord has run out of ways to try to modify the Tenant’s behaviour with respect to feeding the birds.

6. The Commission notes that the Tenant intends to move out of the Premises and her appeal is for the purpose of providing some more time to find new accommodations.

7. Clause 61.(1)(d) of the Residential Tenancy Act, RSPEI 1988, R-13.11 (the "Act") reads:

61. Landlord's notice for cause

(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

8. In Order LD23-280 the Rental Office stated at paragraph 13:

The Officer finds that the Representative has provided sufficient evidence to establish that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the Residential Property through continuous feeding of birds on the property, leading to damage of property.

9. The Commission finds that a review of the documents on file establishes that the Officer's finding was reasonable. The Tenant did not provide evidence or testimony to dispute this finding. The Tenant stated in her Notice of Appeal and at the hearing before the Commission that she was seeking to extend the termination date. The Tenant was told on at least three occasions to stop feeding the birds and the bylaw enforcement officer spoke to her about her actions. Accordingly, the Commission agrees with the Rental Office that a termination of the tenancy agreement is warranted.

10. The Tenant has requested a later termination date and indicated that even an extension to the end of July would be of help. The Commission therefore varies the termination date until July 31, 2023, at 11:59 p.m. The Commission reminds the Tenant that she is responsible for the payment of rent for the month of July, 2023.

5. CONCLUSION

The tenancy agreement is terminated effective July 31, 2023 at 11:59 p.m.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-280 is confirmed, subject to a variation in the termination date.
3. The tenancy agreement shall terminate on July 31, 2023 at 11:59 p.m. The Tenant and any other occupants shall vacate the Premises by this date and time.
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, Thursday, July 6, 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 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.