



Date Issued: July 18, 2023
Dockets: LR23010, LR23040
and LR23043
Type: Rental Appeal

INDEXED AS: Devin Donovan and Jessie Leslie v. Peace Property Management Co. Ltd.
Order No: LR23-32

BETWEEN:

Devin Donovan and Jessie Leslie

Tenants

AND:

Peace Property Management Company Ltd.

Landlord

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 matter is a consolidation of three appeals between these parties. The matter was heard by the Commission on July 11, 2023, and asks the Commission to determine: whether the Director of Residential Rental Property erred in:
 - 1) finding that that rent is due and owing;
 - 2) denying a return of rent to the Tenants; and
 - 3) the distribution of the security deposit plus interest.

2. BACKGROUND

Docket LR23010

2. In March 2022, Devin Donovan and Jessie Leslie (collectively the “Tenants”) entered into a rental agreement for the premises located at Apartment 306, 16 Elena Court, Charlottetown, PE, (the “Premises”) with Peace Property Management Company Ltd. (the “Landlord”). Rent for the Premises is \$1,650.00 per month with a security deposit paid of \$1,700.
3. On January 7, 2023, the Tenants were served with a Notice of Termination by Lessor of Rental Agreement for breach of s. 13 of the *Residential Rental Property Act* (the “RRPA”) for a failure to pay rent. The effective date of the Notice was February 4, 2023.
4. On January 16, 2023, the Tenants filed with the Director a set aside application pursuant to subsection 16(1.1) of the RRPA to dispute the Notice of Termination.
5. In Order LD23-061 dated February 17, 2023, it was stated that, during the hearing before the Director, the parties settled the matters in dispute and noted the terms of the settlement, which were incorporated into the Director’s Order, as follows:
 - 1) the rental agreement be terminated effective 11:59 p.m. on February 28, 2023;
 - 2) the Tenants were to remove their belongings from the Premises on or before March 1, 2023 at 11:59 p.m.; and
 - 3) the Tenants were to pay the Landlord the outstanding rent owing in the amount of \$3,300.00 forthwith.
6. On February 20, 2023, the Tenants appealed the Order stating that they disagreed and that they had not agreed to settle the matters in dispute.
7. As this matter commenced prior to April 8, 2023, the RRPA applies to this appeal.

Dockets LR23040 and LR23043

8. On January 16, 2023, the Tenants filed an application (Form 2) with the Director requesting monetary compensation in the amount of \$6,800 and return of the security deposit in the amount of \$1,700.

9. In Order LD23-245, dated June 2, 2023 the Director found that:
 - 1) the Director does not have jurisdiction to award compensation and denied the Tenants' claim of \$6,800;
 - 2) the Tenants had not established a claim for return of rent; and
 - 3) the Director ordered the Landlord to return the security deposit plus interest in the amount of \$1,706.99 to the Tenants forthwith.
10. On June 8, 2023, the Landlord appealed the Order to return the damage deposit and on June 20, 2023, the Tenants cross-appealed the denial of the claim for return of rent.
11. As this matter commenced prior to April 8, 2023, the RRPA applies to this appeal.

Consolidation

12. As a matter of efficiency, and because the facts and evidence apply to all three appeals, the Commission exercised its discretion to consolidate these three appeals. The matter was heard by way of telephone conference call on July 11, 2023. Lisa Donovan ("Mrs. Donovan"), mother of Devin Donovan, represented the Tenants. Devin Donovan ("Mr. Donovan") testified for the Tenants. The Landlord was represented by Tuyet "Sunny" Tran ("Ms. Tran"). Eric Ellsworth ("Mr. Ellsworth") testified for the Landlord.

3. DISPOSITION

13. The Commission allows the appeal by the Tenants of Order LD23-061 and finds that no rent is owing for the months of January and February 2023.
14. The Commission denies the appeal by the Landlord and allows the appeal by the Tenants of Order LD23-245. The Commission orders the Landlord to return rent to the Tenants in the amount of \$1,650.00 for the month of December 2022, and to return the damage deposit of \$1,700 plus interest in accordance with the RRPA.
15. At the hearing, the Tenants raised a further issue, being the Landlord's non-payment of an invoice for pest control services. The invoice was issued to the Tenants by a company the Landlord uses for pest control for services rendered in August 2022 in the amount of \$862.50. The Commission finds that the Landlord is fully responsible for payment of all pest control services for bedbug spraying of the Premises and shall fully reimburse the Tenants for the amount claimed.

4. ANALYSIS

Preliminary Issue #1 – Late-filed Evidence

16. On June 13, 2023, the Landlord was provided with a letter enclosing the "Proposed Exhibit List" and setting a deadline for new evidence to be filed by Tuesday, July 4, 2023. On July 5, 2023, the Landlord emailed Commission Staff indicating that she had additional evidence she wished to submit, being photographs of the Premises after the Tenants allegedly moved out. In response, Commission Staff advised both parties that the

evidence would be added to the Proposed Exhibit List, but that the Tenants may object to its inclusion at the hearing.

17. The Tenants raised a preliminary objection to this evidence being admitted at the hearing because, they submitted, a late-filed submission of evidence was unfair to the Tenants. The Landlord advised that the reason for the late filing was that the Landlord was busy.
18. The Commission has reviewed the evidence and considered whether to admit and consider it, despite it being late-filed. Such a decision is always contextual and must be made based on the specific facts and circumstances of each case. In this case, for the following reasons, the Commission has decided not to admit the Landlord's late-filed evidence.
19. The RRPA provides the Commission with the discretion on a re-hearing to receive and accept evidence (subsection 26(1)). Rule 21(3) of the Commission's Rules of Practice and Procedure requires evidence to be filed 5 days before a hearing "unless otherwise directed by the Commission". Rule 22 goes on to state:

The Commission may reject documents, other evidence, written submissions, and information requests which are not filed in accordance with any timelines set by the Commission.

20. In this case, the June 13th letter to the Landlord clearly directed the Landlord to file any new evidence by July 4th. The deadline in the letter is in red font, bolded and underlined. The evidentiary deadline had equal application to both parties, and enforcing it ensures procedural fairness to both parties.
21. The Commission finds that the evidence, consisting primarily of pictures of the Premises taken in or about March of 2023, should not be admitted. The Landlord attempted to rely on the evidence to demonstrate that the Premises had not been fully emptied and was unclean when the Tenants moved out, which is why she had to retain some of the security deposit. However, as will be set out below in more detail, the Landlord did not file the appropriate forms with the Director and did not pay the damage deposit, together with interest, to the office of the Director, in order to substantiate a claim against the security deposit pursuant to the RRPA. Therefore, the cleanliness of the Premises is not a factor the Commission needs to consider in making a finding on that issue. Further, even if there was a valid claim to the damage deposit, the Commission finds that the evidence should not be admitted as it would be unfair to the Tenants.

Preliminary Issue #2 – Objection to Landlord's Witness

22. Mrs. Donovan requested that the Commission not allow a particular witness to testify for the Landlord.
23. Rule 56 of the Commission's Rules of Practice and Procedure provides that parties are entitled to call and examine witnesses, and other parties may cross-examine those witnesses. Mrs. Donovan's objections to the witness were noted by the Commission; however, administrative tribunals such as the Commission recognize that a party has the right to call witnesses of their choice and the Tenants would have the opportunity to cross-examine the witness. Therefore, the request to exclude a witness was denied.

Testimony

24. Mr. Donovan and Mrs. Donovan both provided evidence on behalf of the Tenants.
25. In written submissions made prior to the hearing, dated June 29, 2023, Mrs. Donovan submitted that no invoices were provided by the Landlord for the cleaning fees and thus the security deposit should be fully returned with interest. Mrs. Donovan stated that the Tenants were seeking a return of rent in the amount of \$8,750.00, the payment of the pest control bill for 2022 of \$862.50, a full return of the security deposit of \$1,700.00 together with interest, and to not be required to pay rent for the months of January and February 2023.
26. At the hearing, Mr. Donovan testified that the Landlord had asked Ms. Leslie to contact the pest control company to deal with the August 2022 bedbug problem. The pest control bill for bedbug spraying in 2022 was billed to Ms. Leslie and had not been paid by the Landlord. The pest control company has sought payment from Ms. Leslie. Mr. Donovan stated that after the spraying was done in August 2022 the bedbugs came back in early December 2022. He stated that he left the Premises about the end of December as the Premises were not liveable. He stated the Tenants only returned to the Premises to retrieve their belongings on March 1, 2023. Mr. Donovan stated that he could not take his belongings out earlier as the Premises needed to be sprayed for bedbugs. He stated that, despite being told in the early part of December 2022 that there was another infestation of bedbugs, the Landlord did not have the pest control company deal with the problem until February 2023, with the last spraying on February 28, 2023. Mr. Donovan noted that in August 2022, it was only the Premises that was sprayed, and not the adjacent units which is the normal practice. He suggested this caused the eventual return of the bedbugs in December 2022. Mr. Donovan stated that the rent was paid by the Tenants up to and including December 31, 2022. He stated that the Premises were not in liveable condition due to the bedbugs.
27. Early in her testimony, Ms. Tran testified that she was very busy and that while rent payments were due on the first of the month they would not normally be accepted until the next working day. She told the Commission that she wanted payment of rent for January and February 2023, she would agree to return all of the security deposit with interest but she would not pay the pest control bill for 2022 as the Tenants had not sent the bill to her.
28. Mr. Ellsworth testified his role is to assist Ms. Tran in her business affairs.
29. Near the end of the hearing, Mr. Ellsworth and Ms. Tran testified that the Landlord would return \$836.89 of the security deposit, but keep the rest; the Landlord would contact the pest control company and pay the August 2022 bill; and the Landlord was still seeking two months rent for January and February 2023 in the total amount of \$3,300.00.

REASONS FOR DECISION

A. Security Deposit

30. The Landlord did not file a Form 8, in accordance with subsection 10(5) of the RPPA, to retain the security deposit. Nor did the Landlord pay the security deposit funds to the Director as required by the RPPA. As the Landlord did not follow the required procedure to retain the security deposit, the Commission orders the Landlord to deliver the security deposit, together with interest, in the total amount of \$1,723.17, to the Director. Upon the expiry of the appeal period for this Order, the Director shall then disperse the \$1,723.17 to the Tenants.

B. Rent Owing for January and February 2023

31. The Commission accepts the evidence of the Tenants that the bedbugs were first noticed in August 2022 and that treatment was initiated shortly after. The text messages confirm the Tenants' position that the Landlord agreed that the Tenants would contact the pest control company, but the Landlord would be responsible for payment. The Commission accepts the Tenants' evidence that the bedbugs were then absent for a while, but were again noticed in early December 2022. The Commission finds that the Premises were not habitable during the months of December 2022 and January and February 2023, as it appears the original bedbug treatment in August 2022 was not adequate. Early in December 2022, the Landlord was advised of another bedbug problem but did not act on the problem. The 2023 treatments did not occur until February 2023, with the last spraying at the end of that month. The Commission finds that there was an unreasonable delay by the Landlord in attending to this problem and that during these three months the Premises were not habitable. The Tenants' possessions had to remain in the Premises during those months; however, the Tenants did not have the choice to remove them, as removal of the possessions prior to complete spraying would likely have spread the bedbugs to another apartment, home or to a storage unit.

32. Therefore, the Commission finds that the Premises were not fit for habitation during January and February 2023, and the Tenants do not owe rent for those two months.

C. Return of Rent for December 2022

33. With the return of bedbugs in early December 2022, the Commission finds that the Premises were essentially not habitable and that the Landlord did not attend to the problem within a reasonable time. Due to this unreasonable delay, the Commission orders the Landlord return rent for the month of December 2022 and pay the Tenants the amount of \$1,650.00.

34. The Commission finds the evidence does not support a finding of a return of rent for August, September, October and November 2022, as treatment appears to have been initiated within a reasonable time and, at least temporarily, removed the bedbugs.

D. Pest Control Bill for 2022

35. The Landlord is responsible to maintain the Premises in a good state of repair and fit for habitation during the tenancy. It is, therefore, the Landlord's obligation to pay for services rendered to maintain the Premises.

36. Therefore, the Commission finds that the Landlord is responsible to pay the Tenants for the pest control bill issued to Ms. Leslie in August 2022 for the amount claimed of \$862.50.

5. CONCLUSION

37. The Commission orders the following:

- The Landlord shall pay the sum of \$1,723.17 (security deposit together with interest) to the Director. Following the expiry of the appeal period for this Order, the Director shall disburse said \$1,723.17 to the Tenants.
- The Landlord is not entitled to, and the Tenants shall not be liable to pay, rent for the months of January and February 2023.
- The Landlord shall pay the sum of \$1,650.00 to the Tenants as return of rent for the month of December 2022.
- The Landlord shall pay to the Tenants the amount claimed for the August 2022 pest control bill, being \$862.50.
- The Landlord shall make all payments ordered within 15 days of the date of this Order.

IT IS ORDERED THAT

- 1. The Landlord shall pay the sum of \$1,723.17 (security deposit together with interest) to the Director. Following the expiry of the appeal period for this Order, the Director shall disburse said \$1,723.17 to the Tenants.**
- 2. The Landlord is not entitled to, and the Tenants shall not be liable, rent for the months of January and February 2023.**
- 3. The Landlord shall pay the sum of \$1,650.00 to the Tenants as return of rent for the month of December 2022.**
- 4. The Landlord shall pay to the Tenants the amount claimed for the August 2022 pest control bill, being \$862.50.**
- 5. The Landlord shall make all payments ordered in paragraphs 1, 3 and 4 within 15 days of the date of this Order.**
- 6. 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, Tuesday, July 18, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

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.