



Date Issued: July 19, 2023
Docket: LR23048
Type: Rental Appeal

INDEXED AS: Shianne Ashford and Tyler Lannigan v. Roop Realty Ltd.

Order No: LR23-33

BETWEEN:

Shianne Ashford and Tyler Lannigan

Appellants

AND:

Roop Realty 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 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. On or about October 20, 2022, Shianne Ashford ("Ms. Ashford") entered into a rental agreement for the premises located at Apartment #2, 21 Water Street, Charlottetown, PE (the "Premises"), with Roop Realty Ltd. (the "Landlord"). Rent for the Premises is \$800 per month with a security deposit required and paid in the same amount. Ms. Ashford and Tyler Lannigan reside at the Premises (collectively referred to as the "Tenants").
3. On May 19, 2023, the Landlord provided Ms. Ashford with a Form 4(A) Eviction Notice, with an effective date of June 20, 2023. The Form 4 cites the reasons for termination being: (i) you or someone you have allowed on the property have disturbed or endangered others; (ii) you or someone you have allowed on the property have engaged in illegal activity on the property; and (iii) you have failed to comply with a material term of the tenancy agreement.
4. On May 26, 2023, the Tenants filed with the Rental Office a Form 2(A) Tenant Application to Determine Dispute, disputing the Form 4.
5. A hearing was held before the Rental Office on Thursday, June 22, 2023. In Order LD23-283, the Rental Office found that the Form 4 Eviction Notice was valid, denied the Tenants' Application, and ordered the termination of the rental agreement effective 11:59 p.m. on July 2, 2023 and for the Tenants to vacate the Premises by that time and date.
6. The Tenants filed an appeal with the Commission.
7. The Commission heard the appeal on July 11, 2023, by way of telephone conference call. The Tenants participated and called Neil Gallant, Ms Ashford's father, as a witness. The Landlord was represented by Kevin Hobson. Mr. Hobson did not call anyone as a witness.

3. DISPOSITION

8. The Commission allows the appeal and overturns Rental Office Order LD23-283. The rental agreement between the Landlord and Ms. Ashford shall continue.

4. ANALYSIS

9. The primary allegation made by the Landlord against the Tenants is that they have and continue to smoke in the Premises notwithstanding a prohibition against smoking in the Lease.
10. In a written submission made to the Rental Office, received June 19, 2023, Mr. Hobson alleged that he received "numerous complaints" over the past several months regarding smoke coming from the Premises. He says "letters advising these tenants of the

complaints” had been issued to the Tenants but there was no change in their behaviour. Upon questioning by the Panel, Mr. Hobson admitted that only one letter and warning with respect to smoking was given by the landlord to the Tenants. As support for the Landlord’s position, Mr. Hobson submitted three emails from two other tenants of the building alluding to smoking on or about the Premises and the apartment building. The Commission notes that two of these emails are dated *after* the Form 4(A) Eviction Notice was served on Ms. Ashford.

11. The Landlord did not submit into evidence any letters advising the Tenants about the smoking issue. However, the Tenants did testify that they received one letter in April 2023 from the Landlord stating a violation of the smoking prohibition.
12. At the hearing, Mr. Hobson testified that he has received complaints from other tenants and that he is also trying to protect their health. He testified that another tenant had been evicted for smoking in his unit and that there was some damage to the unit as a result of that. However, Mr. Hobson acknowledged at the hearing that he has not inspected the Premises. He said that his assistant has been to the apartment building “within the last few months” and claimed he could smell smoke.
13. The written submission makes other allegations about conduct that they attribute to the Tenants’ behaviour, and some of these were raised by Mr. Hobson at the hearing. However, little to no evidence, beyond emails from two tenants, was provided to support those assertions and the written submission and Mr. Hobson both acknowledge there is no way to substantiate those allegations. Mr. Gallant was called as a witness and fully explained one normal innocent interaction with his daughter that one of the written complaints had alluded was otherwise. Therefore, the Commission attributes very little weight to these other vague allegations.
14. The Tenants testified that they stopped smoking in the Premises when they received the letter from the Landlord in April 2023. They testified that another neighbour smoked in the apartment building, so they were unaware it was not allowed until they received the letter. They stated that they now only smoke outdoors. They testified that they only ever received one warning letter in April 2023 and that no one has come on behalf of the Landlord to inspect the Premises. They testified that if someone did come and inspect the Premises, then they would know that the Tenants do not smoke in the Premises. The Tenants testified that “No Smoking” signs in the building have not been torn down since another Tenant, who was evicted for smoking, left the building.
15. Tenants are permitted to occupy rental units provided their conduct does not breach the statutory or other obligations set out in the lease to their unit. The onus is on the Landlord to prove, on a balance of probabilities, that there has been a breach of these obligations and the reasons for the termination of the rental agreement as laid out in the Eviction Notice. In this case, the Commission finds that the Landlord has not done so and has not provided evidence to satisfy the Landlord’s burden of proof that there has been a breach of the rental agreement.
16. The Landlord relied primarily on vague emails from two tenants – dated after the Form 4(A) Eviction Notice – that briefly address the matter of smoking in general; however, neither tenant was presented as a witness. Mr. Hobson testified that there has been no inspection of the premises by the Landlord since the Tenants were warned about smoking

indoors in April 2023 and provided no evidence to seriously contradict the Tenants' claims that after receiving one warning letter in April 2023, they now do not smoke in the Premises and only smoke outdoors.

5. CONCLUSION

17. For these reasons, the Appeal is allowed. Order LD23-283 is reversed and the rental agreement between the Landlord and Ms. Ashford shall continue.

IT IS ORDERED THAT

1. The appeal is allowed and Order LD23-283 is reversed.
2. The rental agreement between Roop Realty Ltd. and Shianne Ashford shall continue.

DATED at Charlottetown, Prince Edward Island, Wednesday, July 19, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(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.

