



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 25, 2023

Docket: LR23044

Type: Rental Appeal

INDEXED AS: Erin Riley-MacFadyen v. Roger Greaves and Mary Rogerson

Order No: LR23-34

BETWEEN:

Erin Riley-MacFadyen

Appellant

AND:

Roger Greaves and Mary Rogerson

Respondents

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair
Murray MacPherson, Commissioner

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Philip J. Rafuse,
Appeals Administrator
Prince Edward Island Regulatory and
Appeals Commission

1. INTRODUCTION

1. This appeal was heard by the Commission on July 20, 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. In November 2020, Erin Riley-MacFadyen (the “Tenant”), entered into a rental agreement for the premises located at 22 Elm Lane, Charlottetown, PE (the “Premises”) with Roger Greaves and Mary Rogerson (the “Landlords”). Rent for the Premises is \$1650 per month.
3. On May 15, 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 dated May 12, 2023, effective June 12, 2023 (the “Notice”) citing a breach of s. 61.(1)(h) of the Residential Tenancy Act (the “Act”).
4. In Order LD23-276 the Rental Office found that the Notice was valid, denied the Application and ordered the termination of that rental agreement effective 5:00 p.m. on June 30, 2023, and that the Tenant and all occupants vacate the Premises by that time and date.
5. The Tenant filed an appeal with the Commission.
6. The Commission heard the appeal on July 20, 2023, by way of telephone conference call. The Tenant represented herself. The Landlords were represented by Roger Greaves (“Mr. Greaves”) and Mary Rogerson (“Ms. Rogerson”).

3. DISPOSITION

7. The Commission dismisses the appeal and confirms Order LD23-276, subject to a revised date for the termination of the rental agreement.

4. ANALYSIS

8. The testimony of the Tenant and the Landlords confirm the facts as set out in the Director’s Order LD23-276. The Tenant has repeatedly refused to allow the Landlords entry in the Premises to attend to repairs requested by the Tenant. The Landlords state that they have given the Tenant different times that they or their plumber could attend to address problems. The Tenant has told them that the Tenant does not want them to in the Premises. The Landlords have stated it has been a year since they have been able to enter the Premises.
9. The Landlords are a couple who purchased the Premises, a single-family home, to rent for a few years and to eventually occupy as their retirement home. They, like many small Landlords, do most of their own repairs if they do not need professionals to do the work.

With respect to the current repair matter, the Landlord, Mr. Greaves, was going to attend to see if the problem could be repaired by him. The Tenant testified that she does not want Mr. Greaves to attend the Premises by himself. She suggested that he could stay in the car while Ms. Rogerson attended the Premises. She suggested that matters escalated over a heat pump cleaning matter, explained in detail in the file documents and oral testimony.

10. The Tenant advised the Landlords that she would allow a plumber to attend. The Tenant then advised that she would not allow the plumber the Landlords chose to come to the Premises. The Tenant testified that the reason she refused to allow the plumber to attend at the Premises is that she did some searching on Facebook and she concluded the plumber knew someone with whom she had previously had problems. Upon questioning from the Panel, the Tenant provided an explanation that was extraordinary and patently unreasonable. The Landlords testified they were told by their plumber that he does not know the tenant or the other person of concern to the Tenant.
11. The Tenant stated that she felt she had an agreement with the Landlords whereby another plumber would attend the Premises and she would be allowed to stay.
12. Ms. Rogerson stated that she cannot understand why the Tenant has concerns with Mr. Greaves attending the Premises. Ms. Rogerson stated that there was no agreement that the Tenant could stay; however, there was an agreement that a plumber could attend.
13. Mr. Greaves testified that he has experience in the construction industry and he had sought to attend the Premises, after giving the required notice, to assess what work needed to be done. He stated that some work he would be able to do himself while other work would require a plumber. He noted that the Tenant refused entry. He stated that even for outside activity, such as mowing the lawn, he would call ahead to give the Tenant notice. He stated that the dispute is well documented in the text messages contained in the file documents. He also stated that the Landlords are not professional landlords and the Premises is their only rental property.
14. The Commission finds that there is no evidence to warrant reversing the decision of the Rental Office in Order LD23-276. However, given that there is no evidence of rental arrears, the Commission finds that the circumstances warrant a revised termination date of August 31, 2023 at 5:00 p.m.
15. Clause 22.(c) of the Act entitles a tenant to quiet enjoyment and exclusive possession of a rental unit subject to a Landlords right to enter in accordance with section 23. Clause 23.(b)(i) allows a landlord entry to the rental unit for the purpose of carrying out a repair or replacement or to do work in the rental unit provided that the landlord provides written notice to the tenant at least 24 hours before the time of entry. Clause 61.(1)(h) 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:

...

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so;

16. The Commission finds that the Landlords met the clause 23.(b)(i) notice requirement in emails sent on May 8, 2023, and again on May 10, 2023, seeking to enter the Premises. These emails informed the Tenant that the Landlord wanted to assess needed repairs and requesting a convenient time between 9 am and 9 pm on May 15 or 16, 2023. The Tenant's response on May 9, 2023 was "neither day works for me. I don't want you in my house. Your repairs are to be done by a professional not yourself." The Tenant's May 11, 2023 response included the sentence "STOP messaging me unless it is to tell me, like the last time when repair man you hire will be showing up."
17. The Commission also finds a termination of the tenancy is justified under clause 61.(1)(h). The Landlord initially requested access in their May 8, 2023 email. The Tenant refused access as demonstrated in her May 9 email thus establishing a failure to comply with a material term of the tenancy agreement. The Landlord consulted with the Rental Office and the Tenant was advised of the consequences of the failure to comply and was given an opportunity to correct the situation in the Landlords' May 10, 2023 email. The Tenant then proceeded to again refuse access in her May 11, 2023 email.
18. The Commission is mindful that Clause 23.(b)(i) allows a landlord entry. A tenant does not have a right to demand that a landlord send a professional.
19. In addition, the Commission finds that the evidence demonstrates that the landlord-tenant relationship has completely broken down. Such a relationship requires cooperation. Here the Landlords made reasonable requests, granting well in excess of 24 hours notice and providing the Tenant with a wide range of choice of time over two stated dates. The Landlords set out the consequences and gave the Tenant an opportunity to reconsider their position and thus correct the situation
20. The Commission finds that, notwithstanding the Tenant's personal condition, the Tenant failed to comply with a material term of the tenancy agreement and has not corrected that situation within a reasonable time after receiving written notice to do so, and accordingly it is necessary to terminate the rental agreement. There are, however, difficult circumstances which are apparent in the record. There is no indication that the Tenant is currently in arrears of rent. Given these circumstances, and conditional on the rent being paid for August 2023, the Commission varies the termination date to August 31, 2023, at 5:00 p.m.
21. During the remaining period of the tenancy, the Tenant must give access to the Landlords for the purpose of carrying out a repair or replacement or to do work in the rental unit

provided that the Landlords provide written notice to the tenant at least 24 hours before the time of entry.

5. CONCLUSION

22. The rental agreement is terminated effective August 31, 2023, at 5:00 p.m.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Residential Tenancy Office Order LD23-276 is confirmed, subject to a variation in the termination date to August 31, 2023, at 5:00 p.m. The Tenant and all occupants shall vacate the Premises by this date and time.
3. Rent must be paid for the month of August, 2023.
4. For the remainder of the tenancy, the Tenant must give access to the Landlords for the purpose of carrying out a repair or replacement or to do work in the rental unit provided that the Landlords provide written notice to the Tenant at least 24 hours before the time of entry.
5. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Residential Tenancy Act.

DATED at Charlottetown, Prince Edward Island, this 25th day of July, 2023.

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

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.