



Date Issued: July 31, 2023
Docket: LR23051
Type: Rental Appeal

INDEXED AS: Danica Hannam v. A & M Rentals Inc.

Order No: LR23-38

BETWEEN:

Danica Hannam

Appellant

AND:

A & M Rentals Inc.

Respondent

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 26, 2023, and asks the Commission to determine whether the Residential Tenancy Officer (the “Rental Officer”) erred in finding that the rental agreement should be terminated.

2. BACKGROUND

2. In or about November, 2019, Danica Hamman (the “Tenant”), entered into a rental agreement for the premises located at 161 Westridge Crescent, Apartment #3, Charlottetown, PE (the “Premises”) with A & M Rentals Inc. (the “Landlord”). Rent for the Premises is \$860 per month.
3. On June 16, 2023, the Tenant filed with the Residential Tenancy Office an application to determine dispute (the “Application”). Attached to the Application was a Landlord Notice of Termination dated June 16, 2023, effective July 16, 2023 (the “Notice”) citing a breach of s. 61(1)(d) of the Residential Tenancy Act (the “Act”).
4. In Order LD23-322 the Rental Officer found that: The Notice was valid; denied the Application; ordered the termination of the rental agreement effective 11:59 p.m. on July 23, 2023; and that the Tenant 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 26, 2023, by way of telephone conference call. The Tenant was on the phone during the hearing. Daniel Toombs (“Mr. Toombs”) represented the Tenant and testified. The Landlord was represented by Joe Gallant (“Mr. Gallant”).

3. DISPOSITION

7. The Commission dismisses the appeal and confirms Order LD23-322, subject to somewhat different reasons.

4. ANALYSIS

8. Mr. Toombs spoke at length attempting to cast doubt on the various statements contained in the file from other tenants. He described the accusations made by other tenants against the Tenant as false. He stated there was no proof the Tenant was smoking in the building.
9. Mr. Gallant stated that multiple tenants have complained about the Tenant’s smoking. He acknowledged that the Tenant and another tenant have “issues”. He also stated his own observations:
 - The Premises smells of smoke;
 - He has observed the Tenant smoking while holding the door open at the back stairwell;
 - He has seen the Tenant on the front step, door open, smoking;

10. The Commission places less weight on the statements made by other tenants, as they were not presented as witnesses whose evidence could be tested by questioning. The Commission also noted that the Tenant did not testify and thus the Tenant has not, under affirmation, denied smoking in the Premises or adjacent to the apartment building.
11. Mr. Gallant testified as to his own observations. The Commission gives substantial weight to his observations and testimony.
12. The Commission notes that the tenancy agreement specifically identifies the property as a “smoke free living environment”. This constitutes a material term of the tenancy agreement.
13. Clause 61.(1)(d) of 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;

14. The prohibition of smoking is clearly stated in the tenancy agreement. It is a material term of the tenancy agreement. Smoking has health risks and fire safety risks. It can interfere or disturb other tenants or the landlord. It can seriously jeopardize the health, safety or lawful right of the landlord or another occupant. It can put the landlord’s property at significant risk. The Commission agrees with the Rental Officer that the perspective of the other tenants is important. The Commission would add that the perspective of the landlord is also important.
15. Here the evidence of the other tenants is untested and the concerns raised by the Tenant serve to make the Commission question the reliability of such evidence. However, the Commission had the benefit of having heard the direct testimony of the Landlord’s representative, Mr. Gallant. His testimony was clear and was based on his own personal observations.
16. The Commission finds that the actions of the Tenant, witnessed and observed by Mr. Gallant, establish a lawful rationale for the Landlord to end the tenancy agreement with

the Tenant pursuant to clause 61.(1)(d) of the Act. Accordingly, the Commission agrees with the finding of Rental Officer in Order LD23-322, subject to a minor variation in the termination date and time, and for slightly different reasons as noted above.

5. CONCLUSION

17. The Commission confirms the outcome of Order LD23-322, subject to a variation to the termination date and time, based on the Tenant having breached clause 61.(1)(d) of the Act.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. The outcome of Order LD23-322 is confirmed, subject to a variation in the termination date and time.
3. The tenancy agreement shall be terminated on August 14, 2023 at 5:00 p.m. The Tenant and all 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, Monday, July 31st, 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.