



Date Issued: August 10, 2023
Docket: LR23047
Type: Rental Appeal

INDEXED AS: Patio Properties & Trading Inc. v. JP Masson
Order No: LR23-39

BETWEEN:

Patio Properties & Trading Inc.

Appellant

AND:

JP Masson

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-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 25, 2023, and asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that a return of rent was justified.

2. BACKGROUND

2. (a) On June 6, 2014, John Paul, aka JP, Masson (the “Tenant”), entered into a rental agreement for the premises located at Apartment #12, 35 Glen Stewart Drive, Stratford, PE (the “Premises”) with Patio Properties & Trading Inc. (the “Landlord”). Rent for the Premises was \$894.80 per month with a security deposit paid of \$400.00.

(b) The Tenant vacated the Premises on February 6, 2023.

(c) On February 3, 2023, the Tenant filed with the Director an Application for Enforcement of Statutory or Other Conditions of Rental Agreement (the “Application”) seeking a return of rent in the amount of \$3,579.20.

(d) In Order LD23-268 dated June 14, 2023, the Director found that the Application was valid and ordered that the Landlord pay the Tenant the sum of \$3,373.26 on or before July 31, 2023.

(e) The Landlord filed an appeal with the Commission.

(f) As this matter commenced with the filing of the Application prior to April 8, 2023, the Rental of Residential Property Act (the “RRPA”) applies to this appeal.

(g) The Commission heard the appeal on July 25, 2023, by way of telephone conference call. The Landlord was represented by Raeda Al Hasan (“Ms. Al Hasan”). The Tenant also participated.

3. DISPOSITION

3. The Commission dismisses the appeal and confirms Order LD23-268.

4. ANALYSIS

4. Ms. Al Hasan testified that the Premises sustained damage due to tropical storm Fiona in late September 2022 and Apartment #12 was especially affected. A restoration company was contacted promptly. During the period October and November 2022 all the other tenants were granting full access whether they were home or not. She testified that she had trouble contacting the Tenant and had to leave messages for him. She testified that this contact issue frustrated the work done by the restoration company and led to delays in doing the restoration work. The work appeared to be complete by late November but a heavy rain on or about December 14, 2022 revealed that more work needed to be done. She testified that she believed that the Tenant was still living there based on his frequent emails reporting progress or concerns associated with the restoration work. She testified

that she gave him “the freedom to break the contract”. She testified that she suggested to the Tenant that he remove his valuables so the apartment could be kept unlocked.

5. Near the end of her testimony Ms. Al Hasan stated that there was a superintendent at the Premises building who used a key to unlock and lock Apartment #12 for the restoration company.
6. The Tenant stated that he was living at his parents’ home at that time. He stated he went to Apartment #12 every couple days to water his plants and check on the progress. He stated he did not sleep there, shower there or cook there during this time period. He stated that the apartment was not livable during this time period. He stated that the workers advised him he should not stay there during the renovation. He stated that his apartment had more damage than other apartments in the building. He testified that when he visited the apartment to water his plants that, on some occasions the door was unlocked and on other occasions the door was not fully closed.
7. The Commission dismisses the appeal and confirms Order LD23-268 as the Commission agrees with the findings of the Director.
8. The Commission finds that the Tenant was not living in the Premises from October 7, 2022 to February 6, 2023 and the Premises were not habitable during that period. The Commission finds that the Tenant had continued to pay rent for the four months of October, November, December and January. While the Landlord raised the issue of access and submitted that the Tenant was not providing access to the renovation company, the Commission finds that a lessor is responsible to provide access to a restoration company. A lessor should retain a key for a unit but only use it with the lessee’s consent for appropriate purposes such as effecting repairs. In this situation, the Landlord should have identified that the Tenant was not living there, sought his permission and then been responsible for providing access for the restoration company. Here the Landlord assumed that the Tenant was residing in the apartment despite the fact that the emails indicated that the Tenant was not living there but only checking in from time to time. The Landlord testified that the apartment building had a superintendent who locked and unlocked the apartment as needed. Accordingly, the Commission finds that the Landlord’s suggestion that the Tenant did not grant access to the restoration company is not persuasive.
9. The Commission agrees with Order LD23-268 that the Tenant receive a return of rent of \$3,373.26 representing four months rent, adjusted for the 7 days he did reside in the Premises.

5. CONCLUSION

10. The appeal is dismissed and Order LD23-268 is confirmed.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-268 is confirmed.
3. The Landlord shall pay the Tenant \$3,373.26 on or before August 15, 2023.

DATED at Charlottetown, Prince Edward Island, Thursday, August 10, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-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.