



LR23035

PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: August 23, 2023

Docket: LR23064

Type: Rental Appeal

INDEXED AS: Keir MacLeod v Brent MacDonald

Order No: LR23-43

BETWEEN:

Keir MacLeod

Appellant

AND:

Brent MacDonald

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 August 16, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the rental agreement should continue.

2. BACKGROUND

2. In April 2019, Keir MacLeod (the “Landlord”), entered into a written month-to-month tenancy agreement for the premises located at 61 Summer Street, Unit 5, Charlottetown, PE (the “Premises”) with Brent MacDonald (the “Tenant”). Rent for the Premises is \$875 per month due on the first day of the month.
3. On July 8, 2023, the Landlord served the Tenant with an Eviction Notice. The effective date was August 8, 2023. The Notice was served on the Tenant for the following reasons:
 - i. *You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees; and*
 - ii. *An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right of interest of me or the other lessees in the residential property.*
4. On July 10, 2023, the Tenant filed with the Rental Office an application to dispute the Eviction Notice (the “Application”).
5. In Order LD23-366 the Rental Office found that the Eviction Notice was invalid and ordered that the tenancy agreement continue in full force and effect.
6. The Landlord filed an appeal with the Commission.
7. The Commission heard the appeal on August 16, 2023, by way of telephone conference call. The Tenant appeared and represented himself, and called J.P. as a witness. The Landlord appeared and represented himself and called M.G. as a witness.

3. DISPOSITION

8. The Commission dismisses the appeal and confirms Order LD23-366.

4. ANALYSIS

9. The Eviction Notice issued by the Landlord states the particulars of the termination as ongoing issues with another tenant and broken windows.

10. Where a Landlord seeks to evict a tenant for cause pursuant to subsection 61(1) of the *Residential Tenancy Act*, the onus is on the Landlord to prove, on a balance of probabilities, the reason for eviction. In this case, the Commission is not satisfied that the Landlord has provided sufficient evidence to prove the reasons outlined in the Eviction Notice.
11. First, with respect to the issues with another tenant, the documentary evidence includes emails from a tenant (L.M.) to the Landlord complaining about the Tenant playing loud music and having a bonfire in the backyard of the building. The emails are dated between January and May 2022 – well over one year before the Eviction Notice was issued. L.M. also included a written statement outlining issues he has had with the Tenant. At the hearing, the Landlord did not provide any additional evidence about these issues, nor did he present L.M. as a witness.
12. Therefore, with respect to this ground for termination, the Commission agrees with the Residential Tenancy Officer that the Landlord did not provide sufficient evidence to establish that the Tenant has unreasonably disturbed other tenants so as to warrant an eviction.
13. Second, with respect to the broken windows, the Landlord provided three emails from L.M from July 2023, reporting to the Landlord that windows in his apartment had been broken. Photographs of the broken windows were also included.
14. At the hearing, the Landlord testified that while he could not confirm it was the Tenant who broke the windows, in his opinion, there is no other explanation. M.G. testified that he has over 30 years' experience in the glass business and that, in his opinion, the windows were broken by a spherical object. The Landlord's testimony served to support his position that the windows were broken from above. In other words, that the Tenant or someone in the Tenant's apartment had broken the downstairs windows from inside his upstairs apartment.
15. In response, the Tenant submitted that there is no evidence to establish that he broke the windows, beyond the opinion of the Landlord. He testified that the police had investigated the broken windows and that he was not charged as a suspect.
16. After considering the totality of the evidence, the Commission is not satisfied that the Landlord has established the Tenant broke the windows. The Landlord himself admitted he cannot be certain the Tenant broke the windows, and he has merely speculated that it was someone in the Tenant's apartment.

5. CONCLUSION

17. For these reasons, the appeal is dismissed. The Commission confirms Order LD23-366, and the tenancy agreement between the parties shall continue.

IT IS ORDERED THAT

1. The appeal is dismissed and Order LD23-366 is confirmed.

DATED at Charlottetown, Prince Edward Island, Wednesday, August 23, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-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.