



Date Issued: September 7, 2023
Docket: LR23069
Type: Rental Appeal

INDEXED AS: Makayla Wilson v. GT Holdings Ltd.
Order No: LR23-49

BETWEEN:

Makalya Wilson

Appellant

AND:

GT Holdings 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 was heard by the Commission on August 29, 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 November, 2019, Makayla Wilson (the “Tenant”), entered into a month-to-month tenancy agreement for the premises located at 320 Jennifer Street, Apartment #5, Summerside, PE (the “Premises”) with GT Holdings Ltd. (the “Landlord”). Rent for the Premises is \$795 per month.
3. On July 18, 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 July 18, 2023, effective August 1, 2023 (the “Notice”) citing breaches of subsections 61.(1) (c), (d) (e), (f) and (h) of the Residential Tenancy Act (the “Act”).
4. In Order LD23-384 dated August 15, 2023, the Rental Officer found that the Tenant and individuals allowed into the Premises have breached subsections 61.(1) (d) and (h) of the Act; ordered the termination of the rental agreement effective 12:00 noon on August 21, 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 August 29, 2023, by way of telephone conference call. The Tenant participated in the hearing along with Kevin Walsh (“Mr. Walsh”). The Landlord’s representative Teddy Zaghloul (“Mr. Zaghloul”) along with Michael Perry (“Mr. Perry”) participated in the hearing.

3. DISPOSITION

7. The Commission dismisses the appeal and confirms Order LD23-384, subject to a variation of the termination of the rental agreement to 5:00 p.m. Friday September 15, 2023.

4. ANALYSIS

8. Mr. Walsh stated that there are currently no warnings, phone calls or complaints about the Tenant. He stated that the Tenant has resided in the Premises for about 4 years. He described various complaints that the Tenant had about the condition of the Premises.
9. The Tenant denied setting off fire extinguishers. She claimed that she had never received letters or written warnings. She attributed some past issues to a former co-occupant who was “not under my control”. She denied any fighting for the last 2 years. She stated that the Landlord’s allegations were untrue. She stated that Mr. Perry had not gone to the Premises for at least 1 year. She stated that she has not seen Mr. Zaghloul for 4 years.

She stated that at one point there were 4 people in the Premises not 9 people. She stated that Mr. Zaghoul had not telephoned her mother or her with any warnings. The Tenant claimed that she lived in the Premises by herself for the past year and was absent last March. She denied using the items found in the sink and toilet drains. She stated that people were sleeping in the hallways of the apartment building, noting that the building was not secure. She stated that there is fighting all the time in some of the other apartments in the building. She stated that the Landlord's concerns are not to do with her and there have been no complaints since June 30.

10. The Tenant requested additional time to file a police report which she believed would show that the police attended the Premises on only one occasion.
11. Mr. Zaghoul stated that he agreed to rent the Premises to the Tenant in 2019 after talking to the Tenant's mother and the Tenant's mother being "responsible" and co-signing the rental agreement. The Tenant's behaviour was "OK" for the first couple of years. He described objects being found in the toilet and sinks. He described a "flood" occurring that affected the tenant below the Premises. He described complaints of fighting. He noted that he and other employees of the Landlord had sent warnings and made telephone calls, listing numerous dates, including calls to the Tenant's mother. His concerns included issues with abuse of fire extinguishers, excessive noise, police presence and fighting. He stated that "the police advised us to evict".
12. Mr. Perry is the owner/operator of Reno Kings Construction. Mr. Perry testified that his company has 27 employees. Mr. Perry filed an undated letter (Exhibit E-11, page 45 of the Commission Documents) describing what he or his employees have observed. He stated that employees of his company attended the Premises a couple weeks ago, noting flooding and a domestic disturbance. A dog was also in the Premises. He noted that the young couple in the apartment below the Premises was "flooded out". He stated that there are maintenance issues at the Premises and within the last 2 weeks or so his company had to replace the toilet again.
13. Near the conclusion of the hearing, the panel chair advised the Tenant that she had until 12:00 noon August 30, 2023 to file an updated police report. No such report has been received by the Commission as of the date of issuance of this Order.
14. Clauses 61.(1) (d) and (h) of the Act read:

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;

...

(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;

15. The Rental Officer states at paragraph 22 of Order LD23-384:

The Officer finds that based on the totality of the evidence the Tenant and individuals allowed onto the Residential Property by the Tenant have unreasonably disturbed other tenants, contrary to sub-subsection 61.(1)(d) of the Act, and contrary to the material term of quiet enjoyment under sub-subsection 61.(1)(h) of the Act. The Officer notes the direct testimony of M.P. describing numerous severe disturbances occurring inside the Tenant's unit. The Officer further notes T.Z.'s testimony of receiving at least 25 complaints from other tenants regarding disturbances from the Tenant's unit. The Officer finds that these breaches of the Act are sufficient for the Landlord to terminate the tenancy agreement.

16. The Commission, having heard the appeal by rehearing, takes note of Mr. Zaghloul's testimony that both the Tenant and her mother, who had co-signed the rental agreement at the Landlord's request, had been contacted on many occasions about the Landlord's concerns. Mr. Perry provided testimony and a letter outlining what he, and his employees, have observed on the many occasions his company had to attend the Premises for service calls.

17. After having carefully reviewed the documents on file and the testimony of all persons who spoke at the Commission's hearing, the Commission finds that where there is conflict between the testimony of the witnesses of the Landlord and the Tenant, the Commission accepts the testimony of the Landlord's witnesses.

18. The Commission has determined that the Tenant and various persons allowed into the Premises breached clauses 61.(1) (d) and (h) of the Act as a result of their actions and behaviour over the term of the tenancy. The Commission finds that there is no reason to interfere with the decision of the Rental Officer. Accordingly, the appeal is dismissed and Order LD23-384 is confirmed, subject to a variation of the termination of the rental agreement to 5:00 p.m. Friday September 15, 2023.

19. The Commission understands that rent for the month of September 2023 has been paid by a third party and the Landlord has accepted this rent. In accordance with the provisions of section 74 of the Act; the Landlord may retain rent for the month of September 2023 on a pro-rated basis for all the days during which the Tenant occupies the Premises. The Commission orders the Landlord to rebate any remaining rent to the third party.

5. CONCLUSION

19. The Commission has dismissed the appeal, and confirms Order LR23-384 in its entirety.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD23-384 is confirmed, subject to a variation of the termination of the rental agreement to 5:00 p.m. Friday September 15, 2023. The Tenant and all occupants must vacate the Premises by this date and time.**
3. **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, Thursday September 7th, 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.