



Date Issued: September 19, 2023
Docket: LR23068
Type: Rental Appeal

INDEXED AS: Viet Son Technology Inc. v. Brittany McCallum

Order No: LR23-50

BETWEEN:

Viet Son Technology Inc.

Appellant

AND:

Brittany McCallum

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair
M. Douglas Clow, Vice-Chair
Kerri Carpenter, 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 September 6, 2023 and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in ordering: the return of rent to a Tenant, repairs to a residential property; and reduction in rent.

2. BACKGROUND

2. On May 20, 2021, Viet Son Technology Inc. (the “Landlord”) entered into a written rental agreement for the premises located at 19 Young Street, Apartment 2, Charlottetown, PE (the “Premises”) with Brittany McCallum (the “Tenant”). Rent for the Premises was \$1,150.00 due on the 7th day of the month with a security deposit paid of \$1,000.00.
3. On June 7, 2023 the Tenant filed with the Rental Office a Form 2A - Tenant Application to Determine Dispute (the “First Application”). The Application sought an adjustment in rent and return of rent.
4. On June 14, 2023 the Tenant filed with the Rental Office another Form 2A to dispute an Eviction Notice (the “Notice”) dated June 12, 2023 (the “Second Application”). The reason for the Notice was for renovations and/or repairs pursuant to subsection 64.(1)(c) of the Act.
5. Both Applications were heard by the Rental Office on July 13, 2023.
6. In Order LD23-364 dated August 1, 2023 the Rental Office:
 - (a) pursuant to the First Application, found that the Notice of Termination was invalid as the Landlord did not seek the Director’s approval prior to providing the Tenant with the Notice, and that the tenancy agreement is in full force and effect;
 - (b) pursuant to the Second Application, approved the Tenant’s Application and ordered: a return of rent in the amount of \$3,450.00; specific repairs to the premises as set out in the July 5, 2023 Environmental Health report; and a reduction in the monthly rent (to \$650.00 per month), until such repairs are completed. The Rental office also ordered that photos showing the repairs be provided to the Rental Office.
7. On August 17, 2023 the Landlord filed an appeal with the Commission.
8. On September 6, 2023 the Commission heard the appeal by way of telephone conference hearing. The Landlord was represented by Minh Nguyen and Nhut Dinhminh. Van Minh Nguyen provided translation services for the Landlord. The Tenant also participated.

3. DISPOSITION

9. The appeal is dismissed and Order LD23-364 is confirmed.

4. ANALYSIS

(a) Matters Pertaining to the First Application

10. At the hearing, the Landlord did not dispute the finding by the Rental Office that the tenancy agreement is in full force and effect given (as of the date of the hearing before the Rental Office) that the Landlord did not seek approval before issuing a Notice of Termination. The Commission agrees that the Order was properly issued in this regard and it is therefore upheld. The Commission notes, however, that the tenancy agreement has since been terminated by mutual agreement of the parties.

(b) Matters Pertaining to the Second Application

11. By virtue of the fact that the Landlord and Tenant terminated the tenancy agreement in August, 2023 (as will be further discussed herein), the issue of a rent reduction while repairs are being conducted is no longer applicable. The only matter to be considered by the Commission is whether the three months rent payment as ordered by the Rental Office should be overturned, either due to an error by the Rental Office in reaching its decision in this regard, or due to a settlement having been reached by the Parties.
12. First, regarding the decision of the Rental Office, it was determined that the Landlord did not meet the requirements under Section 28(1) of the Act, and compensation was awarded. Section 28(1) states as follows:

28. Obligation to repair and maintain

(1) A landlord shall provide and maintain the residential property in a state of repair that

(a) complies with the health, safety and housing standards required by law; and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

13. At the hearing before the Commission, the Landlord and the Tenant each gave evidence as to the state of the Premises. The Tenant explained that the issues with the Premises started in 2022 and remained unresolved. She stated that at first it was a slow water leak. By January 2023 there was mold on the kitchen ceiling and by May 1, 2023 there was “bad black mold” on the ceiling with a constant drip of water, ultimately escalating to a gush of water. She stated that the Landlord did not send anyone to look at the problem until it got really bad. A plumber looked at it, cut open more drywall but could not identify the cause. She testified that Environmental Health investigated and ordered the Landlord to address the problem by a deadline but the deadline passed.

14. The Landlord's witnesses acknowledged that the Tenant made requests for various issues to be repaired. The Landlord stated that he contacted several contractors and that it was difficult to find people to do the work and the Landlord was put on a waiting list. The Landlord suggested that the water issues were caused by the upstairs tenant not using the shower curtain correctly and an issue with a tenant's washing machine.
15. Perhaps most significantly the Commission has received evidence, being Exhibits E-9 and E-20, being two letters from the Department of Health and Wellness providing the results of an inspection of the Premises. Specifically, the Department found, inter alia, the presence of mold and pooling water. The Department required the Landlord to identify and repair the source of water infiltration, to remediate the mold and affected materials, and to reseal and paint the ceiling once the repairs are complete. The repairs were to be completed within 20 days. The earliest Department communication to the Landlord is dated May 15, 2023. The Commission accepts that the Premises had pooling water and mold, and finds that the Landlord's response to the issues was not reasonable and remedial work was not completed by the timeline set out by Environmental Health. Even if the water issues were caused by the actions of an upstairs tenant, a Landlord is legally responsible for the actions or negligence of other tenants and still responsible for investigating and resolving the issues on a timely basis.
16. Given the evidence presented, the Commission finds that the Landlord has failed to comply with section 28(1) of the Act and has not taken appropriate steps to bring the Premises in compliance with the Act. In the circumstances, the Commission concludes that Order LD23-364, as it relates to the return of three months rent, the requirement to effect repairs (and provide photos to the Rental Office), and to reduce the rent to \$650.00 per month until repairs are complete, is reasonable.
17. The remaining matter to consider is whether there has been a settlement reached which should displace the terms of Order LD23-364.
18. The evidence demonstrates, and the parties did not dispute, that Landlord and Tenant came to an agreement whereby the Tenant would move out of the Premises by August 7, 2023, and the Landlord would pay the Tenant one month's rent plus return the security deposit. The Landlord made a payment in this amount by way of e-transfer and the Tenant moved out on or about August 7, 2023. The Tenant moved out on or about August 8, 2023.
19. The Landlord takes the position that the payment of \$2,150.00 represents the return of one month's rent of \$1,150.00 and the damage deposit of \$1,000.00 as full and final settlement of all matters between the parties. In support of his position, the Landlord points to various email communications wherein the payment of one month's rent and security deposit are mentioned. The Commission notes that the Landlord did not present the Tenant with any sort of written settlement agreement.

20. The Tenant takes the position that the \$2,150.00 was paid by the Landlord to the Tenant as return of the damage deposit of \$1,000 and \$1,150.00 equal to one month's rent in exchange for the Tenant moving out of the Premises in August, 2023. In support of her position, the Tenant noted that the Act provides for payment of compensation if a tenancy is terminated for the purpose of repairs or renovations.

21. Subsection 70.(1) of the Residential Tenancy Act (the "Act") reads:

70. Compensation for repairs and renovations

(1) A landlord shall compensate a tenant who receives notice of termination of a tenancy under section 64 for the purpose of repairs or renovations in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations, or shall offer the tenant another rental unit acceptable to the tenant, where

(a) the tenant does not give the landlord notice under subsection 68(2) with respect to the rental unit; and

(b) the repair or renovation was not ordered to be carried out under the authority of this or any other enactment or a municipal bylaw.

22. While subsection 70.(1) does not specifically apply in this appeal, it does illustrate the concept of a landlord providing a tenant with compensation for termination of a tenancy for the purpose of repairs or renovations.

23. The Tenant and the Landlord presented email and text message communications which they each say justifies their position: in the case of the Landlord, that the payment of \$2,150.00 was to settle all matters that were brought before the Rental Officer, and in the case of the Tenant, that the payment of \$2,150.00 was solely to settle the issues related to the tenancy remaining in effect.

24. The Commission finds that, based on all of the evidence before it, this payment of \$2,150 by the Landlord to the Tenant was a return of the damage deposit of \$1,000.00 and a further sum equal to one month's rent of \$1,150.00 solely for the purposes of obtaining a voluntary termination of the rental agreement. It did not constitute a settlement of the issues related to the request for return of three months rent due to the poor state of the Premises.

5. CONCLUSION

25. Accordingly, the appeal is dismissed and Order LD23-364 is confirmed, subject to the early termination of the tenancy agreement by mutual agreement with compensation.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-364 is confirmed, subject to the early termination of the tenancy agreement by mutual agreement with compensation, and the Landlord shall pay forthwith the Tenant the sum of \$3,450.00 as return of rent.

DATED at Charlottetown, Prince Edward Island, Tuesday, September 19, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

(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.