



Date Issued: September 19, 2023
Docket: LR23074
Type: Rental Appeal

INDEXED AS: David Turner v. Peace Property Management Company Ltd.
Order No: LR23-51

BETWEEN:

David Turner

Appellant

AND:

Peace Property Management Company Ltd.

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C., 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 13, 2023, and asks the Commission to determine whether the Residential Tenancy Office erred in finding that the rental agreement was not reinstated between the parties.

2. BACKGROUND

2. In June 2020, David Turner (the “Tenant”) entered into a tenancy agreement for the premises located at Apartment #112, 16 Elena Court, Charlottetown, PE (the “Premises”) with Peace Property Management Company Ltd. (the “Landlord”). Rent for the Premises is \$1,272.60 per month with a security deposit paid of \$1,260.00.
3. The Tenant and Landlord have previously been parties to matters before the Residential Tenancy Office and the Commission, which ultimately resulted in Commission Order LR23-29 dated July 5, 2023. That Order terminated the tenancy agreement as of July 31, 2023, and ordered the Tenant to pay July rent.
4. On September 1, 2023, Sheriff Services enforced Commission Order LR23-29 and took possession of the Premises.
5. On September 5, 2023, the Tenant filed with the Residential Office an Application to Determine Dispute (the “Application”) seeking: emergency access to the Premises; continued occupation of the Premises until he finds alternative accommodation; and monetary compensation. The Tenant’s Application was based, primarily, on him having paid the Landlord rent for September 2023.
6. In Order LR23-419 the Residential Tenancy Office found that:
 - a. the Tenancy Agreement was not reinstated and the Tenant does not have the right to continuous occupation of the Premises;
 - b. the Landlord must provide the Tenant immediate access to collect his personal belongings in the Premises at the Tenant’s convenience;
 - c. if the Tenant requires additional time to remove his personal belongings, then the Landlord shall store the Tenant’s belongings at the Landlord’s cost; and
 - d. the Landlord shall pay the Tenant \$898.70 forthwith.
7. The Tenant filed an appeal with the Commission.
8. The Commission heard the appeal on September 13, 2023, by way of telephone conference call. The Tenant represented himself. The Landlord was represented by Tuyet “Sunny” Tran who was assisted by legal counsel, Samantha Hameline.

3. DISPOSITION

9. The Commission dismisses the appeal, subject to a variation in the amount the Landlord must repay the Tenant and additional direction to the parties regarding the Tenant's personal belongings.

4. ANALYSIS

10. The issue in this appeal is narrow. The question the Commission must consider is whether the actions of the parties reinstated the tenancy agreement, created a new tenancy agreement, or did neither. This appeal is pursuant to the *Residential Tenancy Act*.
11. A detailed history of proceedings between the parties will provide some context in this matter. We note that the prior proceedings between the parties were held pursuant to the former *Rental of Residential Property Act*.
12. On May 26, 2023, the Residential Tenancy Office issued Order LD23-233, which ordered the termination of the tenancy agreement between the parties on the basis that the Tenant had not paid rent for April 2023, and ordered the Tenant to pay outstanding rent of \$1,624.50.
13. The Tenant appealed Order LD23-233 to the Commission. On July 5, 2023, in Commission Order LR23-29, the Commission dismissed the Tenant's appeal, ordered the tenancy agreement terminated as of July 31, 2023, and ordered the Tenant to pay July rent. It will become important in the reasons below that Order LD23-233 declined to make a finding on whether any amount beyond July rent remained outstanding at that time.
14. The next day, on July 6, 2023, the Tenant filed an appeal of Commission Order LR23-29 with the Supreme Court of Prince Edward Island. This appeal effectively acted as a "stay" of the Commission Order per subsections 26(4) and (5) of the *Rental of Residential Property Act*, which provides that a party may enforce a Commission Order where no appeal has been taken to the Supreme Court.
15. However, on August 17, 2023, the Tenant withdrew his statutory appeal. This, in effect, ended the "stay" of the Commission Order.
16. Accordingly, pursuant to subsections 26(4) and (5) of the *Rental of Residential Property Act*, the Landlord filed the Commission Order with the court, and it was enforced by Sheriff Services on September 1, 2023. As a result, the Landlord was lawfully put in possession of the Premises and the Tenant was directed to vacate.
17. Importantly, and of significance to this appeal, on August 29th or 30th¹, prior to the Landlord's enforcement of Commission Order LR23-29, the Tenant provided the Landlord with two bank drafts, both in the amount of \$1,270. The Tenant intended that one was for

¹ It is not entirely clear from the Record or the direct evidence of the parties what day the Tenant delivered the bank drafts. The bank drafts are both dated August 29th and Director's Order LD23-419 indicates they were given to the Landlord on August 29th; however, the Tenant's Form 2(A) Application to the Director's Office, dated September 5, 2023, states they were delivered on August 30th. In any event, the Commission notes that neither party disputes that the bank drafts were delivered by the Tenant to the Landlord in or around those dates *before* Commission Order LR23-29 was enforced by Sheriff Services on September 1, 2023.

August's rent (the "first bank draft") and the other was to be for September's rent (the "second bank draft"). On the bank drafts the Tenant had handwritten "Aug Rent" and "Sept Rent", respectively. Neither party disputes that the Landlord accepted both bank drafts.

18. Where the issue in this appeal arises is whether the Landlord's acceptance of the second bank draft, which the Tenant intended to be for September's rent, either reinstated the tenancy agreement or created a new tenancy agreement between the parties.
19. The Tenant's evidence and submissions on this point were that, in his opinion, the Landlord's acceptance of September rent was a contract between the parties. He was under the impression that because he had paid all arrears, and the Landlord accepted future rent, he was entitled to remain in the Premises. Throughout the hearing, the Tenant maintained that he did not owe any additional arrears to the Landlord. The evidence supports this.
20. The Landlord's primary submission was that she accepted the second bank draft in the amount of \$1270 because (1) she believed the Tenant still owed arrears and (2) she was not sure when Sheriff Services would enforce the Commission Order LR23-29. The Landlord's direct evidence was that, despite accepting the second bank draft, she never told the Tenant he could stay for September. Legal Counsel for the Landlord argued that it is reasonable for a landlord to accept money from a tenant when they believe they are owed it, and that section 74 of the *Residential Tenancy Act* applies in this case to say that the acceptance of those arrears by the Landlord does not reinstate or create a new tenancy. Legal Counsel for the Landlord also indicated that the Landlord has already returned \$898.70 to the Tenant.
21. We pause here to comment that the Commission is of the view that the actions of the parties, or interactions between the parties, at the material time were governed by the rights and obligations set out in the new *Residential Tenancy Act*, which came into force on April 8, 2023.
22. The Commission is satisfied that section 74 of the *Residential Tenancy Act* applies in this case.
23. Section 74 of the *Residential Tenancy Act* states, in full:

74. Landlord entitled to compensation

- (1) A landlord is entitled to compensation for a former tenant's use and occupation of the rental unit after the tenancy has been terminated.

Acceptance of rent

- (2) The acceptance by a landlord of arrears of rent or compensation for use or occupation of the rental unit after notice of termination of tenancy has been given does not operate as a waiver of the notice, as reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree in writing.

Burden of proof

- (3) The burden of proof that a notice of termination has been waived or the tenancy has been reinstated or a new tenancy created is on the person so claiming. 2022, c.88, s.74.

- 24. The Commission accepts that the Tenant was overholding for some period of time in August 2023. He occupied the Premises for a period after the tenancy was terminated. The Commission also accepts that the Tenant's first bank draft, for August 2023 rent, was a payment in the nature of arrears. It was made at the end of the month, and the Tenant had occupied the Premises for the entire month.

- 25. However, the question in this case is whether the Tenant's second bank draft, which he intended was for future rent for September 2023, and the Landlord's acceptance of that money either reinstated the tenancy agreement or created a new tenancy agreement between the parties.

- 26. The Commission understands and empathizes with the Tenant's understanding that his payment of rent for August and September, and the Landlord's seeming acceptance of same, created a contract between the two. However, the Commission is nevertheless bound to consider the provisions of the *Residential Tenancy Act*.

- 27. First, the Tenant was overholding after the tenancy agreement ended. Subsection 74(2) of the Act clearly states that the acceptance by a landlord of arrears of rent or compensation for use or occupation of the rental unit after notice of termination of tenancy has been given does not operate as a waiver of the notice, as reinstatement of the tenancy or as the creation of a new tenancy "**unless the parties so agree in writing**".

- 28. The Landlord's evidence is that at the time she accepted the bank drafts, she believed she was owed significant arrears, so she accepted both bank drafts. Unfortunately, there is no evidence before the Commission that the parties agreed, in writing, to reinstate or create a new tenancy and the burden to prove otherwise has not been met.

- 29. Second, with respect to the Tenant's submission that his payment of future rent for September created a contract, the Commission looks to the definition of "tenancy agreement":

- 1. **Definitions**

- [...]

- (w) "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities;

- 30. The definition is broad and inclusive, and should be largely and liberally interpreted, but we must still consider whether the facts and evidence in this case support the creation of a new tenancy agreement.

- 31. The Commission recognizes that a tenancy agreement can be implied, but based on the facts and evidence before us in this case we are not convinced that the interaction between the Tenant and Landlord on August 29th or 30th created an implied tenancy. The

evidence demonstrates that though the Tenant intended to pay September rent with the second bank draft, the Landlord accepted the money as she believed arrears were owing Her evidence at the hearing was that she never told the Tenant he could stay for September. Unfortunately, the Landlord's belief about arrears was a misapprehension that will be discussed below; but the single payment of rent (that has since been returned to the Tenant) without any demonstrated mutual understanding or intention between the parties did not amount to creating an implied tenancy agreement in the specific facts of this case.

32. The Commission, therefore, must dismiss the Tenant's appeal and finds that the tenancy agreement was not reinstated between the parties, nor was a new tenancy agreement created.
33. All that said, the Commission disagrees with the finding of the Residential Tenancy Officer (the "RTO") in Order LD23-419 respecting the amount that the Landlord must repay to the Tenant.
34. The RTO accepted that, over the life of these proceedings, the Tenant owed the Landlord rent for May through August 2023, plus an additional amount of \$351.90 outstanding for April 2023 rent.
35. However, Commission Order LR23-29, clearly addresses any amount outstanding between the parties in July 2023. That Order states:

[The Landlord] stated that some rent was paid in June 2023; however, it was \$104.00 short of the total amount owed. [The Landlord representative] explained that the amount the Tenant paid in June was \$104.00 less than the \$1624.50 set out in Order LD23-233. [...]

36. In the following paragraph, the Commission explicitly declined to make a finding on whether the Tenant was short \$104 of the amount ordered in Order LD23-233 because neither party had provided evidence one way or the other. The Commission then ordered the Tenant to pay the rent that remained outstanding, at that time, for July 2023.
37. The evidence is clear that on July 31, 2023, the Tenant paid rent in the amount of \$1270 for July 2023.
38. Therefore, Commission finds that at the end of August 2023, after paying August rent in the amount of \$1270, the Tenant only owed arrears of \$5.20 (being the difference of \$1272.60 and \$1270 for both July and August 2023).
39. Accordingly, the Commission varies Director's Order LD23-419 to the effect that the Landlord is ordered to repay the Tenant a total of \$1,264.80 (Payment on rent of \$1,270.00 - \$5.20 arrears = \$1,264.80). If the amount of \$898.70 was previously repaid, as noted in paragraph 20 above, then the sum owing to the Tenant is \$366.10.
40. On this point, the Commission wishes to provide future direction to the Residential Tenancy Office. Where the Residential Tenancy Office is asked to make findings respecting an amount of rent owing by a Tenant to a Landlord, that finding must be supported by a clear and cogent accounting of the amount owed. In this case, the Record

before the Commission, which includes the evidence that was before the RTO, does not disclose clear evidence from the Landlord establishing the arrears owed by the Tenant. Instead, the Order references oral “testimony” of the Landlord’s representative and amounts from previous Orders. With respect, while previous Orders of the Residential Tenancy Office and the Commission are relevant, they are not “evidence”. Nor are submissions of a party’s legal counsel. Unless there is full agreement on the amount of arrears owing, Landlords should be required to submit an accounting of the rent charges and receipts that fully shows the amounts debited and credited to arrive at the arrears sum owing. Further, this would allow the Residential Tenancy Office to determine whether all charges levied by the Landlord on the Tenant are justifiable under the Act and Regulations.

41. In providing this direction, the Commission is mindful of the disparity between the parties in being able to prove or disprove how much a Tenant owes to a Landlord, and the consequences of those findings. Therefore, when asked to make a finding like this, the Commission expects the Residential Tenancy Office to require Landlords to provide a full breakdown of amounts outstanding, supported by written records.
42. Finally, as will be seen below, the Commission also varies Order LD23-419, and provides further direction and clarification to the parties with respect to the Tenant’s personal belongings.

5. CONCLUSION

43. In conclusion, the Tenant’s appeal is dismissed, in part:
 - a. The Commission finds that the tenancy agreement was not reinstated between the parties, nor was a new tenancy agreement created;
 - b. However, the Commission varies Order LD23-419 to the effect that the Landlord is ordered to repay the Tenant **a total of \$1,264.80**, forthwith. If the Landlord previously repaid the \$898.70, then the amount to be paid is **\$366.10**.
 - c. With respect to the Tenant’s personal belongings, the Commission varies Order LD23-419 as such:
 - i. The Landlord must provide the Tenant immediate access to the Premises to collect his personal belongings in the rental unit at the Tenant’s convenience;
 - ii. The Tenant shall have until Monday, September 25, at 5:00pm to move all of his personal belongings from the Premises;
 - iii. If the Tenant does not move his personal belongings by 5:00pm on Monday, September 25, the Landlord must store the Tenant’s personal belongings at the Landlord’s cost until 12:00pm on Tuesday, October 31st;
 - iv. The Landlord may choose to store the Tenant’s personal belongings in safe storage or on the residential property in a safe manner;

- v. The Tenant and the Landlord must comply with both the inspection provisions at section 38 of the *Residential Tenancy Act* and any applicable security deposit provisions at section 40 of the *Residential Tenancy Act* within 15 (fifteen) days of this Order.

IT IS ORDERED THAT

- 44. The appeal is dismissed, subject to a variation of Order LD23-419 regarding the amount the Landlord must repay the Tenant and direction to the parties respecting the Tenant’s personal belongings.
- 45. The Landlord shall repay the Tenant a total of \$1,264.80, forthwith. If the Landlord previously repaid any portion of this amount to the Tenant, that payment can be offset against the total amount owed to the Tenant.
- 46. The Landlord must provide the Tenant immediate access to collect his personal belongings in the rental unit at the Tenant’s convenience.
- 47. The Tenant shall have until Monday, September 25, at 5:00pm to move all of his personal belongings from the Premises.
- 48. If the Tenant does not move his personal belongings by 5:00pm on Monday, September 25, the Landlord must store the Tenant’s personal belongings at the Landlord’s cost until 12:00pm on Tuesday, October 31st.
- 49. The Landlord may choose to store the Tenant’s personal belongings in safe storage or on the residential property in a safe manner.
- 50. The Tenant and the Landlord must comply with both the inspection provisions at section 38 of the *Residential Tenancy Act* and any applicable security deposit provisions at section 40 of the *Residential Tenancy Act* within 15 (fifteen) days of this Order.

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

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair & CEO

(sgd. Kerri Carpenter)

Kerri Carpenter, 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.