



Date Issued: October 5, 2023
Docket: LR23070
Type: Rental Appeal

INDEXED AS: Roy Jensen v. Gayan Tennekone
Order No: LR23-53

BETWEEN:

Roy Jensen

Appellant

AND:

Gayan Tennkone

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 26, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenant owes rent to a landlord.

2. BACKGROUND

2. In November, 2022, Roy Jensen (the “Tenant”), entered into a rental agreement for the premises located at 1 Stan MacPherson Way, Unit 101, Charlottetown, PE (the “Premises”) with Gayan Tennkone (the “Landlord”). Rent for the Premises was \$2000 per month with a security deposit required and paid in the amount of \$1000. The Tenant vacated the Premises on May 29, 2023.
3. On May 2, 2023, the Landlord filed with the Rental Office an application to determine dispute (the “Application”) seeking an Order that the Tenant pay outstanding rent.
4. In Order LD23-381A the Rental Office found that the Application was valid and ordered the Tenant to pay the Landlord outstanding rent in the amount of \$919.62 on or before September 1, 2023.
5. The Tenant filed an appeal with the Commission.
6. The Commission heard the appeal on September 26, 2023, by way of telephone conference call. The Tenant and the Landlord both participated.

3. DISPOSITION

7. The Commission allows the appeal and reverses Order LD23-381A, finding that the Tenant does not owe rent to the Landlord.

4. ANALYSIS

8. The Tenant testified that he was looking for an apartment in October 2022. He testified that the Landlord’s mother showed him the Premises. He noted that the Landlord’s mother acted as the property manager as she prepared the lease, coordinated repairs, handled the return of keys etc. He noted that the Landlord lives outside of Prince Edward Island while the Landlord’s mother works in Charlottetown and lives in an area not far from Charlottetown.
9. The Tenant testified that during the viewing of the Premises he asked about the cost of electricity as it was the only expense other than basic rent he was required to pay. He testified that the Landlord’s mother told him electricity was around \$100.00 per month. He testified that he was very surprised when the first electricity bill was for around \$185.00 and subsequent bills were higher yet; for example, the following electricity bill was for

about \$248.00. He calculated the yearly average for electricity at the Premises as \$201.19 per month. He stated that about \$200.00 per month would have been an accurate statement and thus quoting about \$100.00 per month was “grossly inaccurate”. He stated that each month he paid \$100.00 for electricity in addition to the basic rent of \$2000.00.

10. The Tenant referred to a text message (Exhibit E-11, page 37 of the Commission file materials) submitting that the Landlord’s mother did not deny saying electricity was around \$100.00 per month. He added that she appeared to attribute the \$185.00 electricity bill to higher electricity rates and possibly increased consumption or usage. He testified that his usage was actually significantly less than the previous occupant (Exhibit E-12, page 40), calculating his usage as 22% less on average. He noted that the electricity rate per kilowatt hour of usage was only marginally higher at a 2.6% increase.
11. The Landlord testified that the rental agreement did not specify a fixed price for electricity. He testified that the Tenant had viewed the Premises with the Landlord’s mother on September 29, 2022 at 4:00 p.m. The Landlord testified that her personally spoke with the Tenant that evening on the telephone for 13 minutes. The Landlord testified that electricity was not discussed but the tenant negotiated inclusion of internet service and the Landlord agreed to this. The Landlord testified that on the telephone call he told the Tenant that the Tenant would be responsible for the electricity. The Landlord testified that the provisions in the rental agreement reflect the discussions during the telephone call. The Landlord confirmed that his mother signed the rental agreement on his behalf.
12. In response to questioning from the Commission panel, the Landlord acknowledged that hot water was an included service in the rental agreement and that the hot water tank was heated by electricity.
13. The Commission finds that a portion of the total electricity bill should have been paid for by the Landlord as the hot water for the Premises is an included service on the rental agreement and the evidence indicates that the hot water for the Premises is generated by electricity. However, there is no evidence before the Commission as to the cost of electricity for the generation of the hot water.
14. The Commission notes that the Landlord’s mother did not testify and therefore the only evidence of what she said to the Tenant is from the Tenant himself. Accordingly, the Commission accepts the tenant’s testimony that the Landlord’s mother told him that electricity was around \$100.00 per month. The Commission finds that the Tenant relied on this representation of the approximate monthly cost of electricity.
15. The Tenant relied on the representation made to him on the cost of electricity and the Commission finds that it was reasonable for him to do so given that the representation was made to him by the individual who signed the lease on behalf of the Landlord. Therefore, the appeal is allowed and Order LD23-381A is reversed.

5. CONCLUSION

16. The appeal is allowed and Order LD23-381A is reversed, resulting in no outstanding rent.

IT IS ORDERED THAT

1. The appeal is allowed.
2. Order LD23-381A is reversed.
3. The Tenant does not owe rent to the Landlord.

DATED at Charlottetown, Prince Edward Island, Thursday, October 5, 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.