



Date Issued: October 24, 2023
Docket: LR23085
Type: Rental Appeal

INDEXED AS: Kevin DesRoches v. Shawn Campbell
Order No: LR23-58

BETWEEN:

Kevin DesRoches

Appellant

AND:

Shawn Campbell

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
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 October 10, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy agreement should continue.

2. BACKGROUND

2. In May 1, 2020, Kevin DesRoches (the “Landlord”), entered into a verbal month-to-month tenancy agreement for the premises located at 327 First Street, Apartment #3, Summerside, PE (the “Premises”) with Shawn Campbell (the “Tenant”). Rent for the Premises is \$390 per month due on the first day of the month. A security deposit of \$200 was paid.
3. On August 21, 2023, the Landlord served the Tenant with an Eviction Notice. The effective date was August 21, 2023. The Notice was served on the Tenant pursuant to subsection 61.(1)e of the *Residential Tenancy Act* (the “Act”):

You or someone you have allowed on the property have disturbed or endangered others.

4. On August 22, 2023, the Tenant filed with the Rental Office an application to dispute the Eviction Notice (the “Application”).
5. In Order LD23-439 the Rental Office found that the Notice was invalid and ordered that the tenancy agreement between the parties continue in full force and effect.
6. The Landlord filed an appeal with the Commission.
7. The Commission heard the appeal on October 10, 2023, by way of telephone conference call. Both the Landlord and the Tenant appeared at the hearing and represented themselves. Katy Fraser was on the telephone line with the Landlord but did not participate.

3. DISPOSITION

8. The Commission dismisses the appeal and confirms Order LD23-439. The tenancy agreement shall continue between the parties.

4. ANALYSIS

9. The Landlord testified that there is an error in paragraph 8 of Order LD23-439 as the Landlord had submitted the information referenced, not the Tenant. The Landlord also submitted that an August 21, 2023 statement of the caretaker (Exhibit E-8, page 25 of the Commission’s document record) was not referred to in Order LD23-439 and therefore he feels that it was not considered by the Rental Office. The Landlord submitted that this statement is evidence that the Tenant has a “violent temper”. The Landlord also stated

that the Tenant had said he would move out had he been given 30 days' notice rather than 1 day of notice.

10. The Landlord testified that the Tenant had stated to him that if the neighbour's cat meowed again in the night, he would throw a match in the unit and then leave. The Landlord acknowledged that only he and the tenant were present when the statement was made. The Landlord stated that "there is something ongoing with the police".
11. The Tenant testified that he informed the Landlord about the cat, the Landlord said something and then he [the Tenant] "spun out". The Tenant stated that he gets along fine with the other tenants except for the cat owner. He stated that he has not been arrested or charged. The Tenant denied saying to the Landlord anything about throwing a match into the building.
12. The onus lies on the party making the allegation; in this case the Landlord, to prove, on the civil standard of the balance of probabilities, that the eviction is warranted.
13. The Landlord testified that the Tenant made the statement about throwing a match into the unit. The Tenant denies he made this statement. The Landlord has offered the written statement of the caretaker to establish that the Tenant has a "violent temper". The Landlord was concerned that the Rental Office disregarded the written statement of caretaker.
14. The Commission notes that the written statement of the caretaker is blurry and difficult to read. However, the Landlord read that statement into the record at the hearing. The statement of the caretaker suggests that the Tenant left the parking lot in his vehicle with rocks flying on the gravel and tires squealing on the pavement. The Tenant appears to acknowledge this by stating that he "spun out" after his conversation with the Landlord. The caretaker's statement also states that the Tenant has a "violent temper". The Commission takes notice that the caretaker did not appear as a witness.
15. The Commission notes the following findings of the Rental Office:

[11] The Officer notes that the evidentiary onus rests on the Landlord where an eviction of a Tenant is sought for alleged behavioral issues. In this case, the parties had conflicting accounts of what had occurred and there were no independent witnesses who were present during this conversation between the parties.

[12] The Officer finds that based on the totality of the evidence the Landlord has not provided sufficient evidence to establish, on a balance of probabilities, that the Tenant has breached subsection 61.(1)(e) of the Act.

16. The Commission finds that the Landlord has not met the burden of proof to support a finding that an eviction was warranted pursuant to subsection 61.(1)(e) of the Act. Where a landlord seeks to evict a tenant, it is incumbent on that landlord to bring forth the best available evidence to support the desired eviction. In this case, a signed unsworn statement was provided but the author of the statement, the caretaker of the Landlord's building, did not appear as a witness. Such testimony could have provided context and possibly an evidentiary basis for the conclusion stated in the written statement. The written statement by itself only suggests a spinout as evidence for the conclusion of a 'violent

temper'. This written statement is insufficient, by itself, to meet the Landlord's burden of proof. Accordingly, the appeal is dismissed and Order LD23-439 is confirmed.

5. CONCLUSION

17. The appeal is dismissed and Order LD23-439 is confirmed. The tenancy agreement between the parties shall continue in full force and effect.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD23-439 is confirmed.
3. The tenancy agreement between the parties shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, Tuesday, October 24, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Murray MacPherson)

Murray MacPherson

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.