



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 1, 2023

Docket: LR23077

Type: Rental Appeal

INDEXED AS: Elizabeth Palmer v. Ashley Shaw

Order No: LR23-62

BETWEEN:

Elizabeth Palmer

Appellant

AND:

Ashley Shaw

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
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 11, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the rental agreement be terminated.

2. BACKGROUND

2. On December 22, 2020, Elizabeth Palmer (the “Tenant”), entered into a written tenancy agreement for the premises located at 232 Carleton Street, Borden-Carleton, PE (the “Premises”) with Ashley Shaw (the “Landlord”). Rent for the Premises is \$1000 per month due on the first day of the month with no security deposit required.
3. On July 17, 2023, the Landlord served the Tenant with an Eviction Notice (the “Notice”). The effective date was August 31, 2023. The Notice was served on the Tenant for the following reasons:

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

You have knowingly given false information about the rental unit.

4. On July 27, 2023, the Tenant filed with the Rental Office an application to dispute the Eviction Notice (the “Application”).
5. In Order LD23-413 the Rental Office found that the Notice was valid and ordered that:
 - A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 22, 2023 and that the Tenant and all occupants vacate the Premises by this time and date.
 - B. A certified copy of the Order may be filed with the Supreme Court and enforced by Sheriff Services as permitted by the Act.
6. The Tenant filed an appeal with the Commission.
7. The Commission heard the appeal on October 11, 2023, by way of telephone conference call. The Tenant was represented by legal counsel, Daniel Tweel (“Mr. Tweel”). Mr. Tweel called Anna Pickering (“Ms. Pickering”) as a witness. The Landlord appeared at the hearing and represented herself. The Landlord called Jeff Newson (“Mr. Newson”) as a witness.

3. DISPOSITION

8. The Commission allows the appeal and reverses the outcome of Order LD23-413.

4. ANALYSIS

9. Mr. Tweel reviewed the grounds for appeal set out in the Notice of Appeal. Mr. Tweel submitted that the Rental Office misinterpreted and gave too broad an interpretation to the

provisions of section 61 of the *Residential Tenancy Act* ("RTA"). Mr. Tweel submitted that the finding that Robert Palmer ("RP") gave false information to law enforcement did not have a basis in evidence. Mr. Tweel also submitted that the Landlord's notice to view the Premises to the Tenant was not in writing.

10. Ms. Pickering testified that she was inside the Premises and she saw Mr. Newson's vehicle pull up. She testified that although the windows of the Premises were open she did not hear a confrontation.
11. The Landlord testified that she had called the Tenant to ask for a key and to give more than 24 hours notice for a viewing by the real estate agent. The Landlord testified that the Tenant agreed to the Landlord's request. The Landlord testified that a call from the RCMP did come in while she and Mr. Newson drove up; however, she did not answer the phone as she thought it was a telemarketer. She then saw RP's truck, so she had Mr. Newson drop her off at a location some distance away.
12. Mr. Newson testified that he went to the Premises to perform a real estate appraisal and saw a truck parked at the end of the driveway. Mr. Newson testified that he was confronted by RP. Mr. Newson stated that a lady then came over and told him he was not allowed on the property. Mr. Newson stated that RP told him that he owned the property; however, Mr. Newson knew from Geolinc that the Landlord owned the property.
13. Sub-clause 23.(b)(ii) of the RTA reads:

23. Landlord's right to enter rental unit restricted

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

...

(b) the landlord provides written notice to the tenant at least 24 hours before the time of entry and the purpose of the entry is to

...

(ii) allow a potential mortgagee, insurer or appraiser of the residential property to view the rental unit, or

14. The Rental Office offered the following reasoning in Order LD23-413:

"The Act expressly requires that the Landlord's notice be in writing. In the present matter, the Landlord provided her notice by way of a telephone call and therefore her notice was invalid. Although the notice was invalid, notice is simply required for entry into the "rental unit"¹ not the "residential property"² at large. In essence, the Tenant was within its Tenant rights to refuse entry into the rental unit but not to refuse entry onto the residential property. Therefore, the Rental Officer finds that refusing

¹ Section 1(o) defines "rental unit" as "living accommodation rented..."

² Defined at Section 1(p) and includes the parcel of land which the rental unit is located.

J.N. access onto the residential property R.P. interfered with the Landlord's lawful interest in her property.”

15. The Commission finds that it is unrealistic for a tenant, or someone assisting a tenant, to make the fine distinction between refusing entry to the rented parcel of land versus the rental unit or building itself. The Commission finds that the Tenant should not be evicted in this case, even though the lack of written notice technically only gave the tenant the right to deny entrance to the rental unit itself. An understandable confusion over such a technicality should not warrant an eviction.
16. That said, the Landlord is fully justified to, in the future, provide the Tenant with notice in full compliance with sub-clause 23.(b)(ii) of the RTA. If the Tenant refuses access to the Premises, the Landlord is within her rights to reapply for an eviction and such application may very well be successful. The Tenant, her legal counsel and her family members should be considered to have been forewarned of the consequences of refusing entry where valid notice has been given.
17. The Landlord has filed information which suggests that she may be pursuing an eviction based on late payment or possibly non-payment of rent. The Commission reminds the parties that is a separate process which may be pursued through the Rental Office.
18. Accordingly, the appeal is allowed, Order LD23-413 is reversed and the tenancy agreement remains in effect, subject to any future orders of the Rental Office or the Commission.

5. CONCLUSION

19. The appeal is allowed. Order LD23-413 is reversed. The tenancy agreement remains in effect.

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **Order LD23-413 is reversed.**
3. **The tenancy agreement remains in effect between the Landlord and the Tenant.**

DATED at Charlottetown, Prince Edward Island, Wednesday, November 1, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(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.