



Date Issued: November 1, 2023
Docket: LR23088
Type: Rental Appeal

INDEXED AS: Judy Ferguson v. Kory Larkin and Jessica Larkin
Order No: LR23-64

BETWEEN:

Judy Ferguson

Appellant

AND:

Kory Larkin and Jessica Larkin

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 19, 2023 and asks the Commission to determine whether the Office of the Director of Residential Rental Property (the "Rental Office") erred in ordering: the return of rent to a Tenant and setting the rent for a residential premises.

2. BACKGROUND

2. On July 1, 2016, Judy Ferguson (the "Landlord") entered into a verbal rental agreement for the premises located at 30 Park Street, Charlottetown, PE (the "Premises") with Kory Larkin and Jessica Larkin (the "Tenants"). Rent for the Premises was originally \$1,050 per month paid in two half-installments during each month. A security deposit of \$525 was required and paid. The tenancy ended on February 28, 2023.
3. On February 3, 2023 Jessica Larkin ("Ms. Larkin") filed with the Rental Office a Form 2 - Application for Enforcement of Statutory or Other Conditions of rental Agreement (the "Application"). The Application sought a finding that a return of rent is owed; and an order that an amount found to be owed by paid.
4. Given that the tenancy ended before April 8, 2023, the Rental of Residential Property Act ("the Act") applies.
5. The Application was heard by the Rental Office on September 7, 2023.
6. In Order LD23-435 dated September 15, 2023 the Rental Office allowed the Application and ordered that:
 - Rent for the Premises is set at \$1,050 per month; and
 - The Landlord shall pay to the Tenants \$6,070.25, forthwith calculated as follows:

\$575.00	Unauthorized Rent increase of \$25.00 (September 2018 to July 2020)
\$1,150.00	Unauthorized Rent Increase of \$50.00 (August 2020 to June 2022)
\$488.00	Unauthorized Rent Increase of \$61.00 (July 2022 to February 2023)
\$3,857.25	Unauthorized Electricity Charge (September 2020 to February 2023)
\$6,070.25	Unauthorized Amount Owing
7. On October 5, 2023 the Landlord filed an appeal with the Commission.
8. On October 19, 2023 the Commission heard the appeal by way of telephone conference hearing. The Landlord and one of the Tenants, Jessica Larkin, participated.

3. DISPOSITION

9. The appeal is dismissed and Order LD23-435 is confirmed.

4. ANALYSIS

10. The Landlord submitted that she felt Order LD23-435 was an “unjust decision” as there were only three increases in seven years, there was no written lease, no paperwork and the tenants were free to move out if they disagreed with the rental increases. The Landlord testified that it was her opinion that the Tenants reported the matter to the Rental Office as they had received an eviction notice so that the Landlord’s son could live in the Premises. The Landlord testified that she could not specifically recall when she gave notice of the rent increases to the Tenants. The Landlord stated that she did not use any Forms for giving notice of the rental increases. The Landlord reviewed her past bank statements and discovered, during the hearing, that it appeared the first rental increase was in 2017 not 2018.
11. The Landlord stated that electricity was initially included in the verbal rental agreement. However, the electricity bills became higher and she learned that the Tenants had acquired an electric fireplace. The Landlord then requested that the Tenants put the electricity account into their own name and start paying the monthly electricity bill.
12. The Tenant submitted that the first rental increase occurred in 2017, not 2018. The Tenant testified that, prior to the electricity being paid for by the Tenants, the Landlord would talk about the electricity bill every other month. The Tenant testified that near the end of 2020, the Landlord asked, and the Tenants agreed, to put the electricity bill in their name to make the Landlord happy. The Tenant testified that a family of five people would naturally use more electricity than two people. She stated that there was a proper way to raise the rent.
13. The Commission finds that there is no evidence that the Landlord followed the requirements of the Act, which specifies, inter alia, that notice is to be given by way of a Form 10, which must be served at least 3 months prior to any increase. Likewise, there is no evidence that the Landlord used the process set out under the Act to apply for the discontinuation of an included service, in this case the electricity. Accordingly, both the rental increase and the discontinuation of electricity service were unlawful as the Landlord failed to abide by the mandatory requirements set out in the Act.
14. The Landlord does not deny that she failed to use the procedures set out under the Act, however, she relies on principles of “fairness”, having claimed that it wouldn’t be fair for the Tenants to live in the home for as long as they did and not have a rent increase. Ignorance of the law is not a valid defence to failing to follow the procedures required by the Act. Landlords and tenants are required to abide by the law.
15. During the course of the hearing it became apparent that the evidence was that the initial rental increase began one year earlier than found by the Rental Office, as indicated by text messages and corroborated by additional bank records the Landlord reviewed during the hearing. While this could have resulted in an increased award of rent repayment to the Tenants, given that the Tenants did not file an appeal to the Rental Office Order, the Commission has not adjusted the amount.

16. Both the Act and its replacement, the Residential Tenancy Act (“the RTA”), contain a process for rental increases and discontinuation of services which must be followed, even if a tenant consents, or appears to consent, to a rental increase or a discontinuation of a service. The legislation applies whether the tenancy agreement is written or verbal. Landlords would be well advised to familiarize themselves with the new RTA in order to ensure they abide by the statutory requirements.

5. CONCLUSION

17. The appeal is dismissed and Order LD23-435 is confirmed. The Landlord owes the sum of \$6,070.25 to the Tenants.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD23-435 is confirmed.**
- 3. The Landlord shall pay the Tenants, forthwith, the amount of \$6,070.25.**
- 4. Rent for the Premises is set at \$1,050.00 per month. This amount is fixed and can only be increased by following the process set out in the Residential Tenancy Act.**

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:

(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.