



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

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**Date Issued:** November 1, 2023

**Docket:** LR23097

**Type:** Rental Appeal

INDEXED AS: Gillian Oakley and Cody MacDougall v. Byung Chul Oh and Eun Ju Jeon

Order No: LR23-66

**BETWEEN:**

Gillian Oakley and Cody MacDougall

**Appellant**

**AND:**

Byung Chul Oh and Eun Ju Jeon

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, Vice-Chair  
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

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Commission Administrator  
Corporate Services and Appeals

## 1. INTRODUCTION

1. This appeal was heard by the Commission on October 18, 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. In October of 2019, Gillian Oakley (“Ms. Oakley”), moved into the premises located at 130 Great George Street, Apartment #4, Charlottetown, PE (the “Premises”) joining Cody MacDougall (“Mx. MacDougall”) (together “the Tenants”). The landlords are Byung Chul Oh and Eun Ju Jeon (the “Landlords”). Rent for the Premises is \$760 per month due on the first day of the month.
3. On August 2, 2023, the Landlords’ representative served the Tenants with an Eviction Notice dated July 31, 2023 (the “Notice”). The effective date was August 31, 2023. The Notice was served on the Tenants for the following reason:

*You are repeatedly late in paying rent.*

4. On August 3, 2023 the Tenants filed with the Rental Office an application to determine dispute (the “Application”).
5. In Order LD23-454 the Rental Office found that the Notice was valid and ordered that the tenancy agreement between the parties terminate effective 5:00 p.m. on October 31, 2023 and that the Appellant and all occupants vacate the Premises by this time and date.
6. The Tenants filed an appeal with the Commission.
7. The Commission heard the appeal on October 18, 2023, by way of telephone conference call. The Tenants participated and were accompanied by Wendy Weeks (“Ms. Weeks”) who acted as a witness. The Landlords were represented by Jacob Roberts (“Mr. Roberts”) who also participated.

## 3. DISPOSITION

8. The Commission dismisses the appeal but varies the termination date of the tenancy agreement to December 31, 2023 conditional upon the rent being paid not later than the first day of each month.

## 4. ANALYSIS

9. Ms. Oakley testified that Mx. MacDougall had previously moved into the Premises with another roommate. Approximately four years ago, that other roommate moved out and Ms. Oakley then moved into the Premises.
10. Ms. Oakley testified that she previously did not understand the importance of paying rent on time. She testified that she was accustomed to receiving text messages reminding her

to pay the rent. She testified that she had not received any warnings. Ms. Oakley stated that she and Mx. MacDougall acknowledged that they messed up in not paying their rent on time over a lengthy period of time, have learned from their mistake and are taking steps to ensure that rent will be paid on time going forward.

11. Mx. MacDougall testified that they feel bad that they and Ms. Oakley were late with paying the rent in the past. Mx. MacDougall stated that from now on they and Ms. Oakley will be on time with our rent. In their words, “we got in to a bad pattern”.
12. Ms. Weeks testified that she is the mother of Ms. Oakley. Ms. Weeks testified that the Tenants are quiet tenants who feel safe in the Premises. Ms. Weeks noted that the Tenants fell into a bad pattern of paying their rent late and the July 31, 2023 Form 4A was the first warning the Tenants received. Ms. Weeks testified that Ms. Oakley reached out to her for assistance and Ms. Weeks stated that she will ensure that the Tenants pay on time from now on. She testified that the Tenants are now using e-transfer and the rent for September and October 2023 has been paid on or before the first of the month. Ms. Weeks testified as to private and confidential information concerning the challenges that the Tenants face.
13. Mr. Roberts testified that the Landlords purchased the apartment building approximately 5 or 6 years ago. Mr. Roberts testified that he is the property manager for the apartment building. He testified that he met with the Landlords in June 2023 and they asked him to evict the Tenants. Mr. Roberts testified that the Tenants had been late paying their rent for the past two years. He stated that the Tenants had been making separate payments and these payments typically ranged from a couple days late to a couple weeks late. He acknowledged that the Tenants were on time with their rent payments for September and October 2023.

14. Clause 61.(1)(b) of the Residential Tenancy Act (the “Act”) reads:

*Landlord’s notice for cause*

(1) *A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

...

(b) *the tenant is repeatedly late in paying rent;*

15. The Commission has reviewed Exhibit E-8 found on pages 26 through 29 of the Commission file materials. Exhibit E-8 contains of list of rental payments and when they were paid commencing August 1, 2021 through to September 1, 2023. Of these payments, only two were made on time. The Commission notes that as well the October 2023 rental payment was made on time.
16. The Commission finds that the Landlords have established that the Tenants have been repeatedly late in paying rent. The Commission further finds that the Landlords correctly followed the provisions of the Act in serving an eviction notice on the Tenants.

17. The Commission notes that the Act provides that a Landlord may, under section 61(1)(b), evict a tenant who is repeatedly late paying rent. It is therefore in the Landlord's discretion whether to evict and so long as the Landlord proves that the Tenant was repeatedly late in paying rent, and that the Notice was served, then the eviction will stand. While a landlord may seemingly tolerate late payment for some time, the Act permits an eviction based on repeated late payment of rent and no warning is required.
18. Accordingly, the Commission dismisses the appeal.
19. However, given the circumstances, the Commission varies the termination date of the tenancy agreement to December 31, 2023 conditional on rent for the months of November and December 2023 being paid in full on or before the first of each month.

## **5. CONCLUSION**

20. The appeal is dismissed. Order LD23-454 is confirmed, subject to a variation of the termination of the tenancy agreement to December 31, 2023.

## **IT IS ORDERED THAT**

1. **The appeal is dismissed.**
2. **Order LD23-454 is confirmed, subject to a variation of the termination date of the tenancy agreement.**
3. **Conditional on rent for the months of November and December 2023 being paid in full on or before the first of each month, the tenancy agreement between the parties shall terminate effective 5:00 p.m. on December 31, 2023. The Tenants and all occupants shall vacate the Premises by this date and time.**
4. **In the event rent has not been paid on or before the first day of the month, the tenancy agreement shall then terminate immediately and the Tenants and all occupants shall immediately vacate the Premises.**

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

## **BY THE COMMISSION:**

(sgd. Kerri Carpenter)  
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Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)  
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M. Douglas Clow, Vice Chair

(sgd. Murray MacPherson)  
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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.