



**Date Issued:** November 1, 2023  
**Docket:** LR23086  
**Type:** Rental Appeal

INDEXED AS: Courtney Fogarty v. Kyle Wolters  
Order No: LR23-67

**BETWEEN:**

Courtney Fogarty

**Appellant**

**AND:**

Kyle Wolters

**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 12, 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 June 2023, Courtney Fogarty (the "Tenant"), began living at the premises located at 186 Central Street, Apartment #3, Summerside, PE (the "Premises") with Kyle Wolters (the "Landlord"). Rent for the Premises is \$1100 per month due on the first day of the month with no security deposit required or paid by the Tenant.
3. On July 2, 2023, the Landlord served the Tenant and other occupants of the Premises with an Eviction Notice (the "Notice"). The effective date was August 2, 2023. The Notice was served for the following reasons:

*You have not paid the security deposit;*

*You have permitted an unreasonable number of occupants in the rental unit;*

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

*You or someone you have allowed on the property have engaged in illegal activity on the property; and*

*You or someone you have allowed on the property has caused damaged to the rental unit.*

4. On August 2, 2023 the Landlord filed with the Rental Office an application to determine dispute (the "Application") seeking that the Tenant vacate the Premises and ordering the Sheriff to put him in possession of the Premises.
5. In Order LD23-443 dated September 21, 2023, 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 28, 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 12, 2023, by way of telephone conference call. The Appellant participated. The Appellant also provided the names of four individuals described as 'witnesses' who were on the conference line, took the affirmation but were not called to testify, even when the Appellant was reminded of this by the Commission panel. The Respondent also participated.

### **3. DISPOSITION**

8. The Commission dismisses the appeal and confirms Order LD23-443.

### **4. ANALYSIS**

9. The Appellant disputed the service of the eviction notice, stating that it was put in her mailbox rather than fastened to the door. Later in her testimony the Appellant made reference to a notice being given to an occupant while she was away. The Appellant stated that any behavioural issues such as having many people into the unit and making loud noise, and also the broken door were caused by another roommate who is no longer residing in the Premises. She acknowledged that rent is owing for August, September and October 2023.
10. The Respondent testified that he had hand delivered the eviction notice. He was unsure how many people were actually residing at the Premises because there were a lot of people there on many occasions. He stated that there were 10 people inside the Premises at the time he served the eviction notice. The people were smoking.
11. The Respondent testified that \$1100.00 is owed for the month of July 2023 and the rent has been \$250 short for August, September and October 2023.
12. The Respondent acknowledged that the garbage was cleaned up in the days prior to the appeal hearing. He testified that damage included a broken door as well as attic insulation which had been pulled down. He testified that there were complaints about noise and partying in the Premises and on the deck. He also noted that given that the Premises are still occupied, he is not able to determine what other damages may have been done to the Premises.
13. The Commission observes that while the behavioural issues and property damage may, or may not, be attributed to the Appellant, both parties acknowledge that rent is owing. While unpaid rent was not noted on the Form 4A, the Form 2(B), dated August 2, 2023, lists unpaid rent as of August 1, 2023.
14. The Commission is mindful that the Appellant did not file a section 75 application (Form 2A) with the Rental Office. Subsections 61.(5) and (6) read:

*Tenant may dispute notice*

*(5) A tenant may dispute a notice of termination under this section by making an application to the Director under section 75 within 10 days after the date the tenant receives the notice.*

*Tenant presumed to accept notice*

*(6) Where a tenant who has received a notice of termination under this section does not make an application to the Director in accordance with subsection (5), the tenant (a) is deemed to have accepted that the tenancy ends on the effective date of the notice of termination; and (b) shall vacate the rental unit by that date.*

15. As the Appellant did not file a section 75 application to dispute the Form 4A notice of termination, the Appellant is deemed to have accepted the end of the tenancy as set out in the Form 4A.
16. The Commission dismisses the appeal and confirms Order LD23-443. The Appellant and all occupants shall immediately vacate the Premises.

## **5. CONCLUSION**

17. The appeal is dismissed and Order LD23-443 is confirmed.

## **IT IS ORDERED THAT**

- 1. The appeal is dismissed.**
- 2. Order LD23-443 is confirmed.**
- 3. The tenancy agreement is terminated and Courtney Fogarty 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.