



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 2, 2023

Dockets: LR23060 and
LR23075

Type: Rental Appeal

INDEXED AS: Randy Pitre and Wayne Richards v. Lester Jinks and Dawn M. Shea

Order No: LR23-68

BETWEEN:

Randy Pitre and Wayne Richards

Appellants

AND:

Lester Jinks and Dawn M. Shea

Respondents

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

1. INTRODUCTION

1. This matter is a consolidation of two appeals between these parties. The matter was heard by the Commission on October 17, 2023, and asks the Commission to determine whether the Director of Residential Tenancy (the “Director”) erred in:
 - 1) finding that the rental agreement be terminated;
 - 2) denying reimbursement to the Tenants for emergency repairs; and
 - 3) finding that the Tenants owed rent to the Landlords.

2. BACKGROUND

2. In or about April 2015, Randy Pitre and Wayne Richards (collectively the “Tenants”) entered into a rental agreement for the premises located at 280 Keppoch Road, Stratford, PE, (the “Premises”) with Lester Jinks and Dawn M. Shea (the “Landlords”). Rent for the Premises is \$1,200.00 per month. A security deposit was not required.

Docket LR23060

3. On June 1, 2023, the Tenants were served via email with an Eviction Notice (the “Notice”) for a failure to pay rent and repeatedly late payment of rent. The effective date of the Notice was June 30, 2023.
4. On June 9, 2023, the Tenants filed with the Director two Applications to Determine Dispute:
 - a) disputing the Notice pursuant to subsection 61(5) of the *Residential Tenancy Act* (the “Act”); and
 - b) seeking reimbursement of emergency repairs that were personally paid by them.
5. In Order LD23-338 dated July 20, 2023 (“Order #1”), the Director denied the Tenants’ application for reimbursement of emergency repairs and ordered that the rental agreement be terminated effective 11:59 p.m. on August 28, 2023.
6. On July 27, 2023, the Tenants filed an appeal of Order #1 with the Commission.

Docket LR23075

7. On July 21, 2023, the Landlord filed an application (Form 2B) with the Director requesting an Order directing the Tenants to pay outstanding rent.
8. In Order LD23-395, dated August 21, 2023 (“Order #2”), the Director allowed the application and ordered the Tenants pay the Landlords the outstanding rent in the amount of \$18,900.
9. On September 11, 2023, the Tenants filed an appeal of Order LD23-395 with the Commission.

Consolidation

10. Shortly after the Tenants filed their initial Notice of Appeal of Order LD23-338 on July 27, 2023 (Docket LR23060), it came to the attention of the Commission that the Landlords' second application (for outstanding rent) was still ongoing before the Rental Office. Because that application dealt with the same parties, the same rental unit and very similar issues as Order #1, the Commission exercised its discretion over its own procedure¹ to hold Docket LR23060 in abeyance until the Landlords' second application was concluded and an order issued (being Order #2).
11. After the Tenants appealed Order #2 (Docket LR23075), as a matter of efficiency and because the same facts and evidence applied to both appeals, the Commission exercised its discretion to consolidate the two appeals pursuant to Rule 36 of the Commission's Rules of Practice and Procedure.
12. Both appeals were scheduled for hearing by way of telephone conference call on October 4, 2023.

Appeal Hearing

13. At the beginning of the hearing on October 4, 2023, the Tenants, represented by Randy Pitre, requested the matter be adjourned because five days prior to the hearing, on September 29, 2023, the Landlord improperly disconnected internet service which impeded his ability to access materials and prepare for the hearing. The Landlord representative, Cathi MacPhail, acknowledged the internet service had been disconnected, though she explained her understanding that it was disconnected in error.
14. After hearing the submissions of both parties on this preliminary issue, the Commission adjourned the hearing to October 17, 2023, to allow the Tenants additional time to prepare and orally ordered the Landlords to re-connect the internet service. Mr. Pitre had also been provided with a hard copy of the evidence package by Commission Staff on October 3, 2023.
15. At the beginning of the hearing on October 17, 2023, Mr. Pitre stated that the internet had not been restored, in part, because it was now a corporate account and he could not access it. Ms. MacPhail provided a screenshot of an email from the internet service provider indicating the internet had been reconnected on October 10, 2023. She testified that both she and the Landlord called the service provider and received verbal confirmation that the internet was reconnected and that there had been activity on the account since its reconnection.
16. As the Tenants had been given two additional weeks to prepare for the hearing, and a hard copy of the evidence package, the Commission proceeded with the hearing.
17. At the hearing on October 17, 2023, the Tenants were represented by Mr. Pitre. The Landlords were represented by Ms. MacPhail. Blair MacPhail and Chalen MacPhail testified on behalf of the Landlord.

¹ *Island Regulatory and Appeals Act*, RSPEI 1988, Cap. I-11.

3. DISPOSITION

18. The Commission allows the appeals of Orders LD23-338 and LD23-395, in part. The Commission:
- a) confirms the termination of the tenancy agreement with a revised termination date; and
 - b) revises the outstanding rent owing to reflect the condition of the Premises in recent months and the Tenants' expenditure to re-shingle the roof of the Premises.

4. ANALYSIS

19. The documentary evidence before the Commission consisted of sixty-eight (68) exhibits, totalling 351 pages, and included materials filed by both parties.

Tenants' Testimony and Submissions

20. With respect to the merits of the appeal, Mr. Pitre characterized the matter as one of landlord neglect rather than non-payment of rent. He stated that up until one and a half years ago the Premises held up, but then things went wrong. For example, he said the roof was leaking, there was damage from Post-Tropical Storm Fiona, pipes under the Premises were leaking, and the fridge and stove were inoperable. Mr. Pitre testified that he made repeated phone calls to the Landlords who did nothing to resolve the situation. When there was heavy rain, the Tenants used buckets to collect rain and eventually they were forced to pay for the roof to be re-shingled because the Landlords did not return their calls. The Tenants submitted into evidence a handwritten receipt for \$4000 for roof repair in July 2022.²
21. Mr. Pitre also testified as to damages caused by Post-Tropical Storm Fiona and resultant power outage. Mr. Pitre explained that the electricity was not fully restored until some 45 days after the storm as the electrical mast had to be repaired and trees cleared. Mr. Pitre further testified that the refrigerator and kitchen stove were damaged from power surges and could not be used, and that without a working refrigerator and electric stove, the Tenants could not purchase and cook food and thus they were forced to eat out. He also testified that two hot water pipes under the Premises were damaged.
22. Mr. Pitre further testified that some time ago the oil furnace had been disconnected, and the Landlords provided two little electric heaters. He said that one of these heaters broke down and the Tenants had to buy a new heater.
23. Mr. Pitre also noted the involvement of the Department of Health and Wellness. He submitted into evidence a report from an Environmental Health Officer, dated August 10, 2023, that noted deficiencies with the Premises and ordered repairs to be done within 30 days.³ Mr. Pitre testified that many of these have not been completed.

² Record before the Commission, Exhibit E-21, pg. 93 ("Record").

³ Record, Exhibit E-35, pgs. 169-170.

24. Mr. Pitre submitted that the Landlords only want to talk when they want rent money and did not want to be contacted by the Tenants. He said that he sent a text message to the Landlords in April 2023 advising about the condition of the Premises, and it was only then that he was advised that the Landlords would retain a “company” to handle the property management of the Premises.
25. Finally, Mr. Pitre raised some alleged procedural deficiencies with the hearings before the Director’s office. For example, he testified that he was refused the opportunity to “defend” the Landlords’ second application for outstanding rent, that evidence was removed from the file, and he was not provided an opportunity to respond to evidence that was late-filed by the Landlord.

Landlords’ Testimony and Submissions

26. Ms. MacPhail testified that she and members of her family (the “Landlord Representatives”) were retained by the Landlords to manage the Premises in the spring of 2023. She testified that rent was last paid in May 2022, and that prior to that final rent payment there was significant back rent owing.
27. On June 1, 2023, the Landlord Representatives delivered notice to the Tenants via email that outstanding rent in the amount of \$16,500 was due by June 10, 2023. The Eviction Notice was also delivered on June 1, 2023. When the outstanding rent was not paid by June 10, 2023, the Landlord Representatives provided further notice to the Tenants that they were expected to vacate the Premises by June 30, 2023.
28. The Landlords’ documentary evidence included a statement of rent owing versus rent paid from June 2019 to April 2023.⁴ The statement showed the balance outstanding as of April 2023 was \$14,100 and that rent was not paid in May, June or July 2023.
29. Ms. MacPhail testified the Landlords first asked the Tenants for rent on April 24, 2023.⁵ The total rent outstanding at that time was \$14,100. It was then that the Landlords first became aware that there had been issues with the roof and that the Tenants had the roof re-shingled in July 2022.⁶ Ms. MacPhail stated that these repairs had been done without the knowledge or consent of the Landlord. Ms. MacPhail stated that this was also the first time the Landlords became aware of the effects of Post-Tropical Storm Fiona in late September 2022.
30. Ms. MacPhail testified that there had been some communication between the Landlords and the Tenants throughout the tenancy, but the Tenants made no mention of roof repairs prior to April 2023. For example, the Landlord and Mr. Pitre exchanged text messages on July 18, 2022, but there was no mention of the roof repairs that would be carried out only three days later. She noted that July 2022 was very dry and questioned the need for an urgent roof repair at that time.
31. Chalen MacPhail and Blair MacPhail briefly testified with respect to the service of the Eviction Notice on June 1, 2023.

⁴ Record, Exhibit E-25, pgs. 112-113.

⁵ Record, Exhibit E-30, pgs.128-129.

⁶ Record, Exhibit E-30, pg.129.

COMMISSION FINDINGS AND DETERMINATION OF THE APPEALS

32. The Landlord sought to evict the Tenants and terminate the tenancy agreement on the basis of unpaid rent in the amount of \$16,500 (as of June 1, 2023) and because they were repeatedly late in paying rent. They later sought to recover the amount for outstanding rent from the Tenants.
33. The Tenants disputed the Eviction Notice and application for rent owing on the primary basis that the Landlord was an “absentee landlord” who did not wish to be contacted, which resulted in the Premises falling into disrepair and needing emergency repairs carried out by the Tenants.

Termination of the Tenancy Agreement

34. The *Residential Tenancy Act* permits a landlord to end a tenancy where rent is unpaid (s. 60(1)) and where the tenant is repeatedly late in paying rent (s. 61(5)).
35. In this case, the evidence is clear and undisputed that the Tenants last paid rent in May 2022 (see Exhibit E-25).
36. The Landlords first gave notice to the Tenants via text message in April 2023 that rent was owing in the amount of \$14,100.00 and it had to be “sorted out” in the next two weeks.
37. On June 1, 2023, via the Landlord Representatives, the Tenants were served with an Eviction Notice and advised that they could pay the outstanding rent arrears, which had increased to \$16,500, within 10 days (as prescribed per the *RTA*).
38. The evidence is undisputed that the Tenants did not pay the outstanding arrears by June 10, 2023. As such, the Landlord Representatives advised the Tenant on June 10, 2023, that they were expected to vacate the Premises by June 30, 2023.
39. Based on the above, the Commission is satisfied that the Tenants have withheld rent payments for at least 18 months.
40. As will be further discussed below, the Tenants have argued that they withheld these rent payments because of the condition of the Premises and the Landlord’s neglect in that respect. However, the Commission notes subsection 19(1) of the *Residential Tenancy Act*, which clearly states:

19. ***Tenant shall pay rent when due***
(1) *A tenant shall pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has an express right under this Act to deduct or withhold all or a portion of the rent.*

41. Therefore, the Tenants were not entitled to withhold rent, despite the condition of the Premises.

42. For these reasons, the Commission finds that the Landlords have established a valid basis for terminating the tenancy agreement due to the non-payment of significant outstanding rent arrears, and upholds the Director's decision to terminate the tenancy.
43. The Commission accepts that the Tenants will need some reasonable notice and accordingly the tenancy agreement is terminated on November 30, 2023 at 5:00 p.m.

Application for Rent Owning

44. To reiterate, the evidence is clear and undisputed that the Tenants last paid rent in May 2022 (see Exhibit E-25). The Landlords submitted a spreadsheet detailing the amount of rent due and paid, which dated back to June 2019. The spreadsheet is, in some part, corroborated by copies of text message exchanges between the Landlord and Tenant, submitted by the Landlord and dating back to July 2021. Based on this evidence, the Commission accepts that that the Tenants have not paid rent since May 2022.
45. According to the evidence, at the end of May 2022, the Tenants owed a balance of \$900. Outstanding rent of \$1,200/month has accumulated since that time. At the end of October 2023, the amount outstanding was \$21,300.
46. The Tenants have not disputed that they have neither paid the outstanding rent arrears nor made regular monthly rent since being served the Eviction Notice.
47. As noted above, the Tenants have argued that they withheld these rent payments because of the condition of the Premises and the Landlord's neglect in that respect. As already discussed, the *Residential Tenancy Act* does not permit tenants to withhold rent payments on this basis. Instead, subsection 19 of the RTA requires tenants to pay rent when it is due, despite the landlord's compliance with the Act.
48. The Commission, therefore, finds that the Tenants have an unpaid rent balance in the amount of \$21,300. However, as will be discussed below, the Commission does accept some of the Tenants' arguments respecting the condition of the premises and necessary repairs and will reduce the amount ordered for repayment accordingly.

Condition of the Premises

49. Section 28 of the *Residential Tenancy Act* requires a landlord to maintain a residential property in a state of repair that complies with health, safety and housing standards required by law and makes the property suitable for occupation by a tenant.
50. The Tenants have argued that the Landlord did not keep the Premises in a good state of repair. Mr. Pitre testified that the Landlord has made no repairs or updates since the Tenants moved in and that any time he tried to call the Landlord, he did not want to be contacted about repairs.
51. Mr. Pitre testified that the Premises suffered damage and experienced a prolonged loss of electricity after Post-Tropical Storm Fiona in late September 2022. He testified that the refrigerator and kitchen stove were damaged from power surges and could not be used, and that without a working refrigerator and electric stove, the Tenants could not purchase

and cook food and thus they were forced to eat out. He also testified that two pipes under the Premises were damaged.

52. However, the Commission also accepts the evidence of the Landlords that they were not made aware of any of this damage until April 2023, at the earliest, when they texted the Tenants about outstanding rent. A text message reply from the Tenants to the Landlords says, in part:⁷

...There was a power surge when Fiona hit and trees came down on the wires between hose [sic] and road. We had all that looked after as well and had little to no power for over a month. The power surge had effected [sic] the fridge and stove at the same time so we did not burdened [sic] you with that so we have a little fridge here since Fiona.

53. The text message goes on to say “[We] would like to discuss at some point purchase of the property.”
54. Based on this exchange, it is not unreasonable to conclude that the Landlord did not understand or appreciate the true nature of the damages and the condition of the Premises in April 2023.
55. However, Mr. Pitre submitted reports from Environmental Health dated August 10, 2023,⁸ and September 22, 2023,⁹ that detail the serious nature of damages to the Premises that require urgent repair.
56. On the basis of the reports, the Commission is satisfied that the Premises do not meet the requirements of section 28 of the *Residential Tenancy Act*, and that the Landlord has a responsibility to promptly address the concerns. But we note the August 10th report states that a phone conversation with Environmental Health was the first the Landlord became aware of the damages to the property.
57. For these reasons, due to the condition of the Premises, the Commission finds that the Tenants are not required to pay rent from August 2023 onward, when the Landlord was made aware of the seriousness of the damages to the Premises from Environmental Health.

Reimbursement for Emergency Repairs

58. Mr. Pitre submitted that the roof needed urgent repairs in July 2022. He testified as to the condition of the roof prior to repairs and submitted photographs into evidence.¹⁰ The photographs suggest the roof was in a poor state of repair and Mr. Pitre testified that it was leaking. He said that their calls to the Landlord about the leaking roof were not returned and they had no choice but to repair it and pay for it out of their own pocket. The Tenants submitted into evidence a handwritten receipt from Paul Biso of Cedar Hill Roofing for \$4,000.00 paid in full dated July 21, 2022.¹¹

⁷ Record, Exhibit E-30, pg.129.

⁸ Record, Exhibit E-35, pgs. 169-170.

⁹ Record, Exhibit E-66, pgs. 340-342.

¹⁰ Record, Exhibit E-7, pgs. 37-41.

¹¹ Record, Exhibit E-21, page 93.

59. In Order LD23-338 (Order #1), the Rental Officer made a finding that the condition of the roof “would likely have met the definition of requiring emergency repairs” but nevertheless denied the Tenants’ claim for reimbursement because the Tenants had not notified the Landlord in accordance with the emergency repair provisions at section 29 of the *Residential Tenancy Act*.
60. The Commission similarly finds that the condition of the roof likely needed urgent repairs in July 2022. However, we note that the new *Residential Tenancy Act* was not yet in force in July 2022 and, therefore, the Tenants were not subject to the requirements of section 29. While the Tenant could have, and arguably should have, made an application to the Director to have the repairs carried out by the Landlord, it is nevertheless clear that the Landlord was enriched to some degree by the Tenants’ arranging for and paying to have the roof repaired. For this reason, the Commission orders the Landlord to reimburse the Tenants \$4,000.

Amount Ordered for Repayment

61. As noted above, the Tenants have an unpaid rent balance in the amount of \$21,300.
62. Based on the findings above, the Commission deducts from that balance:
- a) The \$4,000 paid by the Tenants to repair the roof; and
 - b) Full rent for August, September and October 2023, totalling \$3,600.

63. In summary, the amount owed by the Tenants to the Landlord totals \$13,700.

64. Further, no rent will be owed for the month of November 2023.

Procedural Issues at Director Hearings

65. Finally, we wish to make some comment regarding the Tenants’ concerns about procedural matters with respect to Orders LD23-338 and LD23-395.
66. As noted above, Mr. Pitre raised some alleged procedural deficiencies with the hearings before the Director, including that he was refused the opportunity to “defend” the Landlords’ second application for outstanding rent, that evidence was removed from the file, and he was not provided an opportunity to respond to evidence that was late-filed by the Landlord.
67. In considering these concerns, the Commission notes two things. First, subsection 89(8) of the *Residential Tenancy Act* provides that an appeal before the Commission is in the form of a rehearing where the Commission may receive additional evidence and may make any decision or order as the Director. Second, in *Perry v. Kings Square Affordable Housing Corporation*, 2023 PESC 32, the Prince Edward Island Supreme Court commented that a fair hearing before an intermediate appellate body, such as the Commission, may cure procedural defects in an original administrative hearing (para 37).

68. In this case, the Tenants had an opportunity to submit additional evidence to the Commission and make both written and oral submissions on all matters under appeal. Therefore, the Commission is of the opinion that the rehearing in this particular case remedied any procedural deficiencies perceived by the Tenant before the Director. As such, the Commission finds that there is no basis for setting aside the decisions of the Director on the ground of procedural unfairness.

5. CONCLUSION

69. The Commission allows the appeals of Orders LD23-338 and LD23-395, in part, as set out in this Order.

IT IS ORDERED THAT

- 1. The appeals of Orders LD23-338 and LD23-395 are allowed, in part.**
- 2. The tenancy agreement is terminated as of November 30, 2023 at 5:00 p.m. The Tenants shall vacate the Premises by this date and time.**
- 3. The Tenants shall pay to the Landlord the amount of \$13,700 by November 30, 2023 at 5:00 p.m.**
- 4. No rent is owing for November 2023.**
- 5. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, Thursday, November 2, 2023.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(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.