



Date Issued: November 6, 2023
Docket: LR23072
Type: Rental Appeal

INDEXED AS: Eddie and Joan Power v. Mark Garland and Crystal Warren
Order No: LR23-70

BETWEEN:

Eddie and Joan Power

Appellant

AND:

Mark Garland and Crystal Warren

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-Chair
Kerri Carpenter, 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 September 27, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenancy agreement continues between the parties.

2. BACKGROUND

2. In February 2023, Edward (Eddie) Power and Joan Power (the “Landlords”) entered into a written fixed-term rental agreement for the premises located at 5 Mill Street, Montague, PE (the “Premises”) with Mark Garland and Crystal Warren (the “Tenants”). Rent for the Premises was \$1,500 per month.
3. On July 10, 2023, the Landlords delivered to the Tenants a Form 4(A) Eviction Notice. The Eviction Notice listed the reason for termination of the tenancy agreement as:

“You or someone you have allowed on the property has caused damage to the rental unit.”

4. The effective date of the Eviction Notice was August 31, 2023.
5. On July 13, 2023, the Tenants filed with the Rental Office an Application to Determine Dispute to dispute the Eviction Notice and to request a return of \$300 rent. A hearing was held by the Rental Office on August 14, 2023, and in Order LD23-387 the Rental Office found that the Notice was invalid and the Application was allowed, and denied the Tenants’ request for a return of rent.
6. On September 6, 2023, the Landlords filed an appeal with the Commission of Order LD23-387.
7. The Commission heard the appeal on September 27, 2023, by way of telephone conference call. The Landlords, Edward and Joan Power, both participated. One of the Tenants, Mark Garland, also participated.
8. The Commission also notes that on July 14, 2023, the Tenants filed a second Application to Determine Dispute to request a recovery of an overpayment of the security deposit. That Application was heard by the Rental Office on October 12, 2023, and resulted in Order LD23-486 dated October 16, 2023. That Order was not the subject of this appeal.

3. DISPOSITION

9. The Commission allows the appeal of Order LD23-387 and the tenancy agreement is terminated effective November 30, 2023, at 5:00 p.m.

4. ANALYSIS

10. The Landlord’s reason on the Eviction Notice was that the Tenants had caused damage to the residential property by widening the driveway and removing a portion of the bank along the neighbouring property without permission. Further, the Landlord alleged that the

Tenants' improper removal of weeds now requires additional work to remove the contaminated soil. The Tenants disputed the Eviction Notice saying that the Landlord agreed to them removing some weeds along the driveway and to share the expense equally.

11. The Landlord, Mr. Power, testified that he agreed to the Tenants removing some Japanese knotweed from the edge of the property and that he would split the cost of that removal. However, he testified that the Tenants more than just removed the weeds. Relying on photographs submitted into evidence, Mr. Power testified that the Tenants actually widened the driveway by approximately two-feet, removed a portion of the bank along the neighbouring property (approximately two-feet), and removed a tree stump that was located on the neighbouring property. Mr. Power testified that he did not give the Tenants permission to do this work.
12. Mr. Power pointed to pictures he submitted into evidence to demonstrate the before and after of the Tenants' weed removal. He testified that the driveway used to be approximately 22ft wide, but is now 24ft and encroaches approximately two-feet onto the neighbour's property. Further, he says that the bank is now at a 45-degree angle and is at risk of eroding. He pointed to a picture showing some run-off from the exposed soil of the bank onto the gravel driveway.
13. Mr. Power testified that he never would have agreed to have this work done without ensuring it respected the property line and the bank. Further, he testified that he never would have agreed to the removal of the tree stump because it was on the neighbour's property and he was not even aware the tree had fallen down (because he does not live on Prince Edward Island). He further testified that because of the removal of soil from the bank and the risk of erosion, he is left with no option but to build a retaining wall to protect the bank.
14. Mr. Power also testified that the improper removal of the weeds has resulted in their return, which will require him to have them removed again.
15. The Tenant, Mr. Garland, submitted that he was authorized to do all of the work completed and that none of the work resulted in any damage to the premises whatsoever.
16. At the hearing, Mr. Garland testified that he and the Landlord made a deal to get rid of the knotweed and share the expense, and that is what he did. He said he has been a contractor for 46 years and has experience. He said all he did was remove the weeds by scraping down the bank about three-inches – not two-feet. He testified that there has never been any soil run off the bank. He said the tree roots were on the Landlord's property and all they did was remove the stump. In any event, Mr. Garland said the neighbour agreed to this.
17. With respect to the return of the weeds, Mr. Garland testified that proper removal required the infected soil be sprayed, but that because he never received payment for the first step of the removal, he did not complete the second step (spraying). Written submissions from Mr. Garland's lawyer also attribute the inability to complete the second step of the removal, and resultant return of the weeds, to the Eviction Notice.

18. Mr. Garland testified that the cost to remove the weeds was \$600, and Mr. Garland agreed he did not provide the Landlord with a receipt for the work. He said they never damaged the property, they just tried to clean it up enough to live in. He testified that he has made many minor repairs around the rental unit and has not sought any reimbursement from the Landlords.
19. Ultimately, the position of the Tenants is that they had permission from the Landlord to remove the knotweed and widen the driveway and that they completed both tasks diligently. There has been no damage to the Premises as a result of the work performed.

Findings

20. The *Residential Tenancy Act* permits a landlord to end a tenancy where the tenant has caused unreasonable damage to the rental unit or the residential property (s. 61(1)(f)).
21. Upon review of the evidence, the Commission is satisfied that the Landlord agreed to removal of the weeds. However, we are further satisfied that the scope of the work carried out by the Tenant was beyond what the Landlord agreed to. An email from the Landlord to the Tenant(s) a day or two after visiting the property provides a contemporaneous account of this. He wrote:

"I am all for getting rid of that terrible weed, but I have real concerns about the work you carried out on my property without my approval. Cutting bank to the property line without a retaining wall could be a real problem."

22. The pictures submitted by both the Landlord and Tenant do depict that a significant portion of the bank appears to have been removed. One of those pictures does show run-off from the exposed soil into the driveway of the residential property. The Landlord's testimony regarding his observations of the work carried out on the property, and his concerns about the bank stability as a result, are in accordance with those pictures. The Landlord testified that he will need to undertake remedial work to repair this damage.
23. Further, the evidence demonstrates that the weeds have returned to the property and the Landlord will be required to undergo further treatment and removal to deal with them.
24. Based on the evidence before the Commission, and for the reasons outlined above, we are satisfied that the Tenant did cause unreasonable damage to the residential property, namely by widening the driveway and removing a portion of the bank without permission from the Landlord and by not properly completing the weed removal resulting in their return in the backyard. For this reason, the Commission upholds the Eviction Notice.

5. CONCLUSION

25. The Commission allows the appeal of Order LD23-387 and the tenancy agreement is terminated effective November 30, 2023, at 5:00 p.m.

IT IS ORDERED THAT

1. **The appeal is allowed and the tenancy agreement between the parties is terminated effective November 30, 2023, at 5:00 p.m. The Tenants shall vacate the Premises by this date and time.**

DATED at Charlottetown, Prince Edward Island, Monday, November 6, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, 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.