



Date Issued: December 5, 2023
Docket: LR23098
Type: Rental Appeal

INDEXED AS: Ken Marshall v. Alexander "Alli" Henderson
Order No: LR23-72

BETWEEN:

Ken Marshall

Appellant

AND:

Alexander "Alli" Henderson

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 November 2, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that a rental agreement continue in full force and effect.

2. BACKGROUND

2. In December 2022, Ken Marshall (the "Landlord") entered into a verbal month-to-month tenancy agreement with Alexander "Alli" Henderson (the "Tenant") for premises located at 254 St. Peters Road, Apartment #1, Charlottetown, PE (the "Premises"). Rent for the Premises is \$900 per month due on the first day of the month with a security deposit of \$1,000 required and paid.
3. On September 8, 2023, the Landlord served the Tenant with an Eviction Notice (the "Notice"). The effective date was October 31, 2023. The Notice was served for the following reasons:

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

You have failed to comply with a material term of the tenancy agreement.

4. On September 13, 2023 the Tenant filed with the Rental Office an application to determine dispute (the "Application") disputing the Notice.
5. In Order LD23-478 dated October 11, 2023, the Rental Office allowed the Application and ordered that the tenancy agreement between the parties continue in full force and effect.
6. The Landlord filed an appeal with the Commission.
7. The Commission heard the appeal on November 2, 2023, by way of telephone conference call. The Landlord participated and called Sara Cousins ("Ms. Cousins") and Jamie Marshall ("Mr. Marshall") as witnesses. The Tenant also participated.

3. DISPOSITION

8. The Commission allows the appeal. The tenancy agreement is terminated effective January 30, 2024, providing that there are no rental arrears.

4. ANALYSIS

9. Ms. Cousins is a tenant in the Premises. She testified that she is concerned about parking. The Tenant's unit only has one parking space and Ms. Cousins has 2 spaces. For a time, Ms. Cousins gave the Tenant permission to use one of her parking spaces. However, she did not at the time realize he would just leave that trailer there. She had family visiting so she asked for the parking space back. The trailer was not moved. She also testified that the Tenant is loud on the telephone, that people are coming and going as they buy items

from the Tenant. She stated that the Tenant's customers park in tenant only parking spaces. She testified that the Tenant's deck is unsightly as he has items for sale piled on it. She noted that his patio door is sometimes left open and she is concerned about safety.

10. The Landlord testified that he received a call from another tenant that the Tenant almost hit a parked car was on September 24, 2023. The Landlord stated that he has seen the Tenant's patio door left open. The Landlord testified that it was he who took the pictures in the file. He stated that the grass cutters are getting tired of having to move the Tenant's stuff. He stated that the Tenant had 2 or 3 trailers there all summer. He stated that the Tenant sometimes parked his vehicle and trailers on the grass. The trailers are not registered or inspected. He explained that the 2 bedroom apartments have 2 parking spaces and the 1 bedroom apartments have 1 parking space. The Tenant's apartment has 1 bedroom.
11. Mr. Marshall, who is the Landlord's nephew, is also a tenant in the Premises. He testified that he saw the Tenant almost hit a parked car, hitting the brakes hard and then taking off. He testified that he saw the Tenant "passed out on the deck with cigarettes lit in the summer". He testified that the Tenant's patio door had been left open and the Tenant has left the Premises in his vehicle, leaving the patio door open.
12. The Tenant testified that he sells items on Facebook Marketplace. He stated that customers do come and go. He stated that one of his friends sometimes parks in the wrong spot. He stated that he had a 4 by 8-foot utility trailer parked in what he thought was his second parking spot. He stated he had a second trailer as well which is a former pop up camper. When the flea market shut down he asked Ms. Cousins if he could park his second trailer in her unused parking spot. He testified that since the hearing before the Rental Office he now meets his customers off site. He testified that a "senior lady" has parked in Ms. Cousin's parking spot. He stated that his trailer is no longer on the premises. He noted that the Landlord only put the tenant only parking signs two and a half months ago. He stated that he is not hard to get along with and does not like confrontation. He said he can lock his back patio door and is not a threat to anyone. He stated that he could take away his storage totes and store them elsewhere.
13. The Commission notes that the Rental Office did not have the benefit of the affirmed testimony of the other tenants of the Premises, Mr. Marshall and Ms. Cousins. While the Tenant's conduct does appear to have improved since the hearing before the Rental Office, it is the conduct at the time the Notice was served that is determinative. The Commission finds that the Tenant's conduct has disturbed the other tenants over an extended period of time. Accordingly, the Commission reverses the decision and terminates the tenancy agreement. Given all of the circumstances, the effective date of the termination date is January 31, 2024 at 5:00 p.m. The Tenant must pay rent until the termination date.

5. CONCLUSION

14. The appeal is allowed. The tenancy agreement is terminated effective January 31, 2024 at 5:00 p.m.

IT IS ORDERED THAT

1. The appeal is allowed.
2. Director's Order LD23-478 is reversed.
3. The tenancy agreement between the parties is terminated effective January 31, 2024 at 5:00 p.m. provided that there are no rental arrears. The Tenant and all occupants shall vacate the Premises no later than this date and time.
4. 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, Tuesday, December 5, 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:

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.