



Date Issued: December 12, 2023
Dockets: LR23087 and
LR23106
Type: Rental Appeal

INDEXED AS: Hossein Ashrafi v. Patio Properties & Trading Inc.

Order No: LR23-75

BETWEEN:

Hossein Ashrafi

Appellant

AND:

Patio Properties & Trading Inc.

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-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 December 6 2023, and asks the Commission to determine whether the Director of Residential Tenancy (the "Director") erred in:
 - 1) Ordering a credit to a tenant for rent;
 - 2) denying a landlord's application to terminate a tenancy agreement.

2. BACKGROUND

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2. On November 1, 2023, Hossein Ashrafi (the "Tenant") entered into a written rental agreement for the premises located at 35 Glen Stewart Drive, Apartment #10, Stratford, PE, (the "Premises") with Patio Properties & Trading Inc. (the "Landlord"). Rent for the Premises is \$1,160.00 per month. A security deposit of \$1,100.00 was paid.
3. On July 31, 2023, the Tenant filed with the Director an Application to Determine Dispute (the "Application") seeking:

To request a return of rent due to an unlawful rent increase; and

To request a determination that my landlord contravened my right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or restricted access to the rent unit, changed the locks or failed to secure the rental unit, failed to repair or maintain the rental unit, or any other material term of the tenancy agreement.

4. In Order LD23-432 dated September 14, 2023, the Director allowed the Tenant's application in part and ordered the Landlord to credit the Tenant rent for October, 2023 in the amount of \$40.00.
5. On October 4, 2023, the Tenant filed an appeal of Order LR23-432 with the Commission.

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6. On September 1, 2023, the Landlord served an Eviction Notice ("the Notice") on the Tenant for the following reason:

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

7. On September 7, 2023, the Tenant filed with the Rental Office an application to determine dispute (the "Form 2A").
8. In Order LD23-494, dated October 23, 2023 the Director denied the Notice and allowed the Form 2A and ordered that the tenancy agreement between the parties continue in full force and effect.

9. On November 14, 2023, the Landlord filed an appeal of Order LD23-494 with the Commission.

Consolidation

10. As a matter of efficiency, and because the facts and evidence apply to both appeals, the Commission exercised its discretion to consolidate these two appeals. The matter was heard by way of telephone conference call on December 6, 2023. The Tenant participated and was assisted by Shiva Shaham ("Ms. Shaham") who acted as interpreter. The Landlord was represented by Raeda Alhasan ("Ms. Alhasan") and Nassar Karfoul ("Mr. Karfoul").

3. DISPOSITION

11. The Commission dismisses both appeals and confirms both Order LD23-432 and LD23-494.

4. ANALYSIS

12. Ms. Alhasan stated that the apartment building is a senior friendly building with many seniors living there. She stated that the Landlord has lost two very good tenants recently. She stated that other tenants are considering leaving. She stated that tenants are afraid of the Tenant. She stated that one bedroom in the Premises had items stored in it piled to the ceiling. She stated that there were police cars around the building on many occasions. She stated that she is not targeting anyone; however, the Tenant crossed the line at every stage.
13. Mr. Karfoul stated that he went to the Premises with a repair person. He stated that the Tenant pushed him out and would not allow him inside.
14. The Tenant, through his translator, informed the Commission that he relied on the translated written statement filed shortly before the hearing (Exhibit E-20 December 6, 2023 email). As such, the Tenant did not orally testify.

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15. In this docket the Tenant already received a return of rent for a rental overpayment and has not filed any evidence to suggest that the amount of returned rent, \$40.00, was insufficient. The Tenant raises other matters, but the evidence is lacking. For example, the Tenant alleges that Ms. Alhasan entered his son's bedroom while his son was present. However, there is no testimony from his son, no affidavit from his son, or no signed statement from his son. This is especially important as the Tenant informed the Commission he was not there at the time of the alleged entry.
16. This matter was the Tenant's application. The onus is on him to provide the best available evidence to convince, first the Director and then, on appeal, the Commission of the merits of his application. The burden of proof is based on the civil standard of the balance of probabilities. In simple language, the scales of justice must be tipped, however slightly – such as 51% - in favour of the application. In this matter, the Commission had only

hearsay evidence and the evidence was lacking in detail, factual specifics and context. Such evidence tends to not be very convincing and the Commission cannot give it full weight.

17. The Commission finds that the available evidence does not support the Tenant's application on a balance of probabilities.

18. Accordingly, the Commission denies this appeal (Docket LR23087) and confirms Order LD23-432.

Docket LR23106

19. In this docket the Landlord seeks to terminate the tenancy agreement with the Tenant based on various reported behaviour that the Landlord alleges constitute disturbing or endangering others. The Landlord has provided emails and text messages from other tenants in an effort to support the position. No affidavits or sworn statements from these tenants were filed and none of these tenants were called as witnesses. As is common, emailed and text message complaints and concerns sent by tenants to a landlord often include hearsay, speculation and inferences along with actual observations and facts. When such tenants are called as a witness, the Commission may, by way of questioning, be able to sift through such information to sort out what the witness has actually observed as opposed to what they have been told by others.

20. This matter was the Landlord's application. The onus is on the Landlord to provide the best available evidence to convince, first the Director and then, on appeal, the Commission of the merits of the application. The burden of proof is based on the civil standard of the balance of probabilities. In simple language, the scales of justice must be tipped, however slightly – such as 51% - in favour of the application. In this matter, the Commission had evidence that was a blend of observations and reports of others. Had even some of these complaining tenants appeared as witnesses, they could have been questioned on what they saw or observed, when, what the context was so that the Commission could separate solid facts from rumours and innuendo. While the emails and texts from other tenants were considered, they were not compelling and thus not given full weight.

21. The Commission finds that the available evidence does not support the Landlord's application on a balance of probabilities.

22. Accordingly, the Commission also denies this appeal (Docket LR23106) and confirms Order LD23-494.

5. CONCLUSION

23. Both appeal dockets are dismissed and as such Orders LD23432 and LD23-494 remain in full force and effect. The tenancy agreement shall continue, the return of rent already ordered is sufficient, and the determination of matters sought by the Tenant is denied.

IT IS ORDERED THAT

1. The appeals are both denied.
2. Orders LD23432 and LD23-494 remain in full force and effect.

DATED at Charlottetown, Prince Edward Island, Tuesday, December 12, 2023.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(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.