



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: December 13, 2023**

**Docket: LR23105**

**Type: Rental Appeal**

INDEXED AS: Danielle Hunter and Shane Hebert

Order No: LR23-77

**BETWEEN:**

Danielle Hunter

**Appellant**

**AND:**

Shane Hebert

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, Vice-Chair

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 November 9, 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. On August 20, 2017, Danielle Hunter (the "Tenant"), entered into a verbal month-to-month tenancy agreement for an upstairs unit located at 558 Kentyre Road, Harrington, PE (the "Premises") with Shane Hebert (the "Landlord"). Rent for the Premises is \$600 per month due on the first day of the month with no security deposit required.
3. On September 7, 2023, the Landlord served the Tenant with an Eviction Notice (the "Notice"). The Notice was served for the following reasons:

*You have not paid your rent in the amount of \$1,200.00.*

4. On October 10, 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 the Landlord in possession of the Premises.
5. In Order LD23-505 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 November 30, 2023 and that the Tenant 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 on November 6, 2023.
7. The Commission heard the appeal on November 9, 2023, by way of telephone conference call. The Tenant and her mother Shari Hunter ("Ms. Hunter") participated. The Landlord and his stepfather, Bruce Kelloway ("Mr. Kelloway") participated.

## 3. DISPOSITION

8. The Commission allows the appeal and reverses Order LD23-505. The tenancy agreement remains in effect.

## 4. ANALYSIS

### Evidence of the Parties

9. The Tenant testified that there was an Emergency Protection Order ("EPO") in effect between the parties, effective February 11, 2023 to May 12, 2023. Therefore, during this time, she did not pay rent because she was not to have any contact with the Landlord,

either direct or indirect, while the EPO was in place. After the expiry of the EPO, the Landlord moved back into his unit below the Premises.

10. The Tenant testified that a short time after the Landlord moved back, they had a discussion where he expressed his remorse. The Tenant testified that they had a conversation about the two months rent and he indicated he wanted to put the matter behind and move forward. In the Tenant's handwritten statement (Exhibit E-10) she wrote in part:

*"A short time after Shane had returned to the residence I had a conversation with him in which he explained to me that he was very sorry for his actions and he also mentioned to me that I wouldn't need to worry about those two months or providing those two months rent due to the circumstances ..."*

11. The Tenant also testified that beginning in January 2023, there was no door between the units and that there has been no bathroom door for 8 months.
12. The Landlord testified that he served the Form 4A Notice by taping it to the Tenant's door and she then ripped it up and threw the paper at him. He stated that the receipts he entered into evidence are his proof of payment (or non-payment, as the case may be) for rent.
13. The Landlord did not provide direct evidence to dispute that he had agreed the Tenant did not owe rent for the months the EPO was in place. When asked if he recalled the discussion between the parties related to forgiveness of the rent owing, he said "no I don't, no". When asked whether he received the \$700 in April he agreed to receiving it but said it may have been a payment because she owed me money, but it was not for rent.
14. Regarding the door between the units and the bathroom door, the Landlord testified that the Tenant broke them. He stated that the Tenant was told to file an application with the Director's Office about the doors.

### **Commission's Findings**

15. The Landlord's Application requests an order requiring the Tenant to vacate the Premises and ordering the Sheriff to put the Landlord in possession of the Premises.
16. Clause 51(4)(b) states that a landlord shall not regain possession of a rental unit without an order directing the tenant to vacate the rental unit. In an application where the Director, or the Commission, as the case may be, is asked to make an order directing a tenant to vacate the rental unit and putting the landlord in possession, the Director (or the Commission) must be satisfied that the tenant has to vacate for a reason prescribed by the Act.
17. In Order LD23-505, the Officer ultimately concluded that the Landlord had established a valid basis for terminating the tenancy agreement due to non-payment of two months of rent. In the circumstances of this case, the Commission's review of the evidence and testimony of the parties leads us to a different conclusion than the Officer in Order LD23-505.

18. An appeal to the Commission, per subsection 89(8), is heard by way of a re-hearing, and the Commission has the discretion to receive and accept new evidence and information, and to make any decision or order that the Director is authorized to make. The statutory requirement for a re-hearing requires that the Commission make its own decision based on the entire record.<sup>1</sup>
19. At the hearing before the Commission, the parties did not dispute that the Tenant had not paid rent for two months in the Spring of 2023. However, their evidence introduced some contradictions about *why* she did not pay rent and whether the Landlord had expressly told the Tenant he would forgive rent payment for those months as a result of the EPO.
20. The Tenant testified that the only reason she did not initially pay rent for those two months was because the EPO was in effect and she could not have any contact with the Landlord, either directly or indirectly. Her evidence demonstrates that she did make a payment to the Landlord for rent in the amount of \$700 in April 2023. She testified that the police had told her she could send a rent payment if she did not include any messages in her e-transfer. As noted above, the Tenant testified that when the EPO expired and the Landlord moved back into his downstairs unit, he told her she did not have to pay rent for the two outstanding months. She therefore did not pay him any more rent for those two months.
21. The Landlord did not provide any cogent evidence to dispute the Tenant's version of events that he had agreed the Tenant did not owe rent for the months the EPO was in place. When asked if he recalled the discussion between the parties related to forgiveness of the rent owing, he replied with only "no I don't, no". When asked whether he received the \$700 in April he agreed to receiving it but said it may have been a payment because she owed me money, but it was not for rent.
22. The Commission finds the Tenant's evidence to be more credible on these points. She conceded that she had not paid for two months – this admission against her interest enhances her credibility. However, the Tenant went on to provide direct testimony that the Landlord had forgiven rent for two months as a direct result of the EPO being in place. The Landlord's testimony on this point consisted of a brief denial of having any recollection of the conversation.
23. In the specific circumstances of this case, and in light of the Tenant's evidence explaining that she had not paid rent for two months because the Landlord had forgiven the outstanding rent payments, the Commission finds that the Tenant does not owe any amount to the Landlord for outstanding rent.
24. Therefore, the Commission is not satisfied that the Landlord has established a valid basis for terminating the tenancy agreement due to non-payment of rent, because he told the Tenant that she did not owe rent for those months.

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<sup>1</sup> *Perry v. Kings Square Affordable Housing*, 2023 PESC 32, at para 22.

25. Finally, the Commission notes the following. The undisputed evidence is that for a significant period of time, commencing in January 2023 up until the date of the hearing before the Commission, there was no door separating the Tenant's unit from the Landlord's unit in the premises. Further, the Tenant testified and provided supporting (video or photographic) evidence to corroborate her testimony, that the Landlord entered her unit without her permission, and when he was less than fully clothed. This affected the Tenant's privacy, created a loss of enjoyment and was inappropriate given the circumstances. The Landlord was responsible for preserving the integrity and privacy of the unit. Landlords are not entitled to enter tenant's units without following the provisions of the legislation and a failure to follow the requirements of the legislation is a serious infringement of a tenant's right to quiet enjoyment. As there is no Tenant application for a return of rent before us, the Commission declines to make such an award.

## **5. CONCLUSION**

26. The appeal is allowed and Order LD23-505 is reversed. The tenancy agreement remains in effect.

### **IT IS ORDERED THAT**

- 1. The appeal is allowed.**
- 2. Order LD23-505 is reversed.**
- 3. The Tenant does not owe the Landlord any amount for outstanding rent up to the date of the hearing.**
- 4. The tenancy agreement remains in effect.**

**DATED** at Charlottetown, Prince Edward Island, Wednesday, December 13, 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

### **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.