



Date Issued: December 18, 2023
Docket: LR23104
Type: Rental Appeal

INDEXED AS: Geoff Dobson and Barb Dobson v. PEI Housing Corporation
Order No: LR23-79

BETWEEN:

Geoff Dobson and Barb Dobson

Appellants

AND:

PEI Housing Corporation

Respondent

ORDER

Panel Members:

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

Compared and Certified a True Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

A. 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.

B. BACKGROUND

2. On December 16, 2021, Geoff Dobson and Barb Dobson (the “Tenants”), entered into a written month-to-month tenancy agreement for premises located at 9 Champion Court, Apartment #212, Charlottetown, PE (the “Premises”) with PEI Housing Corporation (the “Landlord”). Rent for the Premises is \$405 per month due on the first day of the month with no security deposit required.
3. On August 31, 2023, the Landlord served the Tenants with an Eviction Notice (the “Notice”). The effective date was September 30, 2023. The Notice was served for the following reasons:

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

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

4. On October 3, 2023 the Landlord filed with the Rental Office an application to determine dispute (the “Application”) seeking that the Tenants vacate the Premises and ordering the Sheriff to put the Landlord in possession of the Premises.
5. In Order LD23-489 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 October 26, 2023 and that the Tenants and all occupants 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 Tenants filed an appeal with the Commission.
7. The Commission heard the appeal on November 9, 2023, by way of telephone conference call. The Tenants participated. The Landlord was represented by Lori Johnston (“Ms. Johnston”).

C. DISPOSITION

8. The Commission allows the appeal and overturns Rental Office’s decision in Order LD23-489. The tenancy agreement is in full force and effect.

D. ANALYSIS

9. The Tenants testified that the various incidents described by the Landlord's staff are hearsay and that the Landlord cannot prove them to be true. The Tenants describe the Premises as being in an unhappy building and they need time to find a better place to live. They testified that other tenants let people, including homeless people, into the building and yet they are blamed for this. They noted they did have issues with their son; however, he no longer visits the building. They do acknowledge having several cats.
10. Ms. Johnston reviewed the documentation in the file materials describing various incidents reported by employees of the Landlord. Ms. Johnston did not bring any of the employees directly involved with the Landlord's interactions with the Tenants to testify at the hearing. Ms. Johnston testified that the Tenants were permitted one cat per the policy of the Landlord. Early in the tenancy the Landlord's employees discovered there were 3 and then later 4 cats. Ms. Johnston also noted that the Tenants do not have a parking space and yet had an old unregistered car sitting in a visitor's parking space. Ms. Johnston stated that Mr. Dobson was seen attempting to repair the car and doing welding on it.
11. Upon receiving the eviction notice from the Landlord, the Tenants did not file a section 75 application using a Form 2A to challenge the termination of the tenancy agreement. Subsection 61.(6) of the Act provides that unless a tenant disputes a notice of termination within 10 days of receipt, the tenant is deemed to accept the termination and must vacate.
12. The Director's form for a notice of eviction is not clear in terms of how a Tenant goes about disputing a notice of eviction. The Tenants did not vacate and from that fact alone, together with the materials filed and evidence given, it is clear that the Tenants dispute the eviction. Further, the Director and the Commission have in the past considered the merits of the eviction upon considering an application for possession, where a Tenant challenges the validity of an eviction. Therefore, the Commission will look at the circumstances of the eviction to determine if sufficient grounds were present to justify an eviction.
13. In this case, the Landlord did not bring any direct evidence regarding the circumstances leading to the Notice of Eviction. The Tenant quite reasonably claims that the evidence is all third party hearsay and has not been validated. She further claims that all of the information shows that the Landlord has been taking information provided to it at face value and not giving the Tenant an opportunity to respond, nor is the Landlord conducting investigations into the complaints. The vast majority of the evidence provided by the landlord consists of written reports of events, often based upon unproven information gathered from other tenants. Much of the Landlord's hearsay evidence relates to allegations of the Tenants inviting disruptive people to the premises.
14. The Landlord claims the Tenant was made aware of the one pet policy prior to moving in. The Tenant disputes that. The Landlord has not shown that a written policy was provided to the Tenants in this regard. It is also noted that the Tenant claims that the cats are necessary as support animals. The Landlord stated that it does not recognize support animals other than service animals. The Commission has not received evidence to show that the policy permitting one but not more than one pet was given to the Tenants in advance of moving in. The Tenants say that they told the Landlord's representative in advance of moving in and were advised the cats were permitted.

15. The Lease mentions that the rent includes parking, but the Landlord states there is a policy for applying for a parking space. The Commission accepts that the Tenant was not until recently appreciative of the importance of the policy. The Tenant must follow this and other written policies of the Landlord.
16. Finally, the Commission notes that some of the evidence in the Landlord's file was very concerning and as such the Commission felt it necessary to consider the evidence in support of the attempted eviction. In most cases the evidence showed that the Landlord's representatives did little or no investigation regarding allegations about Tenants, yet drew conclusions that the Tenants had engaged in conduct supporting an eviction. Further, the Landlord's own record showed that the Landlord's representatives may not have handled matters appropriately, the most significant example being evidence (which came from the Landlord's records) that the Landlord's representative, having not given the required written notice to enter the Tenants' unit, opening the door to the Tenant's apartment without permission or invitation. Since the Tenants have not sought a remedy regarding this event, the Commission does not make a determination regarding same, however, it should be noted that where such events occur, the Director and Commission consider same to be a significant breach of a tenant's right to quiet enjoyment of a rental unit.
17. On a balance of probabilities, the Commission is of the view that the Landlord did not provide sufficient direct evidence to establish that it had valid reasons to issue the Notice of Eviction. Therefore, the eviction is overturned. The tenancy agreement is in full force and effect.
18. This Order does not preclude the Landlord from bringing a further application, with direct evidence. The Tenant should now be aware of the appropriate manner of disputing a Notice of Eviction, that being to file (with the Director's office) an application within 10 days to contest the eviction.

E. CONCLUSION

19. The appeal is allowed and the tenancy agreement is in full force and effect.

IT IS ORDERED THAT

1. The appeal is allowed.
2. The Tenancy Agreement is in full force and effect.

DATED at Charlottetown, Prince Edward Island, Monday, December 18, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Panel Chair and
Commissioner

(sgd. M. Douglas Clow)

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.