



Date Issued: December 21, 2023
Docket: LR23111
Type: Rental Appeal

INDEXED AS: Kings Square Non-Profit Housing Corporation v. Derrick and Patricia McQuaid
Order No: LR23-83

BETWEEN:

Kings Square Non-Profit Housing Corporation

Appellant

AND:

Derrick McQuaid and Patricia McQuaid

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Corporate Services and Appeals

1. INTRODUCTION

1. This appeal was heard by the Commission on December 6, 2023, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a rental agreement be terminated.

2. BACKGROUND

2. On March 1, 2021, Kings Square Non-Profit Housing Corporation (the “Tenant”) entered into a written month-to-month tenancy agreement with Derrick McQuaid (“Mr. McQuaid”) and Patricia McQuaid (“Ms. McQuaid”) (together the “Landlords”) for premises located at 137 Dale Drive, Apartment #10, Stratford, PE (the “Premises”). Rent for the Premises is \$959.50 per month due on the first day of the month.
3. Sometime in 2016, the Tenant entered into a sublet agreement with Breanna Atwood (the “Subtenant”). The previous lease between the Tenant and the Landlord, if one exists, was not put into evidence.
4. On October 27, 2023, the Landlords served the Tenant with an Eviction Notice (the “Notice”). The effective date was November 30, 2023. The Notice was served for the following reasons:

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

You or someone you have allowed on the property have engaged in illegal activity on the property.

5. On November 3, 2023 the Tenant filed with the Rental Office an application to determine dispute (the “Application”) disputing the Notice.
6. In Order LD23-540 dated November 20, 2023, the Rental Office dismissed the Application and ordered that the tenancy agreement between the Landlord and the Tenant be terminated effective 5:00 p.m. on November 30, 2023. The Tenant, Subtenant and all occupancy must vacate the Premises by that date and time.
7. On November 27, 2023 the Tenant filed an appeal with the Commission.
8. The Commission heard the appeal on December 6, 2023, by way of telephone conference call. The Tenant was represented by Kim Gallant and Bill Campbell. The Subtenant participated in the hearing. The Landlords were both present and participated.

3. DISPOSITION

9. The Commission allows the appeal and reverses Order LD23-540.

4. ANALYSIS

10. The Tenant representatives attended the hearing but did not make any submissions. The Tenant filed submissions on behalf of the Subtenant.
11. The Subtenant testified as follows. She has lived in the Premises for 7 years and had no complaints for the first five or so years. She has talked to several neighbours who have not indicated concerns to her. She says the complaints have come as a result of a cockroach infestation which she feels she is being blamed for.
12. The Commission documentary and oral evidence regarding the following categories:
 - i. Allegations of the Subtenant causing disturbances;
 - ii. Allegations of the Subtenant's visitors and their animals causing disturbances; and
 - iii. Allegations of the Subtenant engaging in illegal activity in the Premises.
13. The evidence on behalf of the Subtenant included written submissions and also lengthy oral testimony. Landlord Mr. McQuaid commenced his testimony by stating that the Subtenant gave no evidence and simply rambled, while the Landlords submitted affidavits in support of their case.
14. The Commission notes that in fact the Tenant presented direct evidence which was capable of being questioned and tested. The Landlord, on the other hand, who bears the burden of proof in this case, submitted unsworn statements and brought none of the authors of the statements to the hearing. Further, Mr. and Ms. McQuaid had very little direct involvement in the relevant allegations and therefore had very little direct evidence to offer to the Commission.
15. While statements signed by other tenants are valuable, in cases where such evidence is refuted, or the statements themselves leave questions that must be answered, the value of them is very limited. The statements put into evidence in this case contain a significant amount of information that does not appear to be within the direct knowledge of the particular authors. Further, some of the evidence does simply not support the requested relief, such as the suggestion that statements by witnesses that visitors to Ms. Atwood's unit "look like they are on drugs" causes a significant enough disturbance to other tenants that it would justify eviction. Without having the opportunity to question the authors of the statements, it is virtually impossible for the Commission to ascertain each of the witnesses' actual direct knowledge of relevant allegations. Evicting someone is a serious matter and a landlord must provide sufficient direct evidence to establish the Landlord's case for eviction on a balance of probabilities. Otherwise, the Commission will not uphold an eviction.
16. Accordingly, the Commission finds that the evidentiary burden has not been met and the eviction is overturned. The tenancy agreement continues in full force and effect.

5. CONCLUSION

17. The appeal is allowed and Order LD23-540 is reversed. The tenancy agreement continues in full force and effect.

IT IS ORDERED THAT

- 1. The appeal is allowed.
- 2. Order LD23-540 is reversed and thus the tenancy agreement continues.

DATED at Charlottetown, Prince Edward Island, 21st day of December, 2023.

BY THE COMMISSION:

(sgd. Kerry 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.