



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: February 13, 2024

Docket: LR23114

Type: Rental Appeal

INDEXED AS: Jade Gillis v. Alan Aten and Debbie Aten

Order No: LR24-03

BETWEEN:

Jade Gillis

Appellant

AND:

Alan Aten and Debbie Aten

Respondent

ORDER

Panel Members:

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

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 January 9, 2024 and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that subsection 62(1) of the *Residential Tenancy Act* (the “Act”) applies for termination of the tenancy to permit possession of a mobile home site for the Landlords’ use.

2. BACKGROUND

2. In December 1, 2011, Jade Gillis (the “Tenant”) entered into a rental agreement for the premises, specifically a mobile home site, located at 22 Springvale Lane, Springvale PE (the “Premises”) with Alan Aten and Debbie Aten (the “Landlords”). Rent for the Premises is \$100.00 per month. There was no security deposit paid.
3. On September 25, 2023, the Landlords served a Landlord Eviction Notice (Form 4B) dated September 25, 2023 to be effective April 1, 2024 (the “Eviction Notice”). The Notice was served on the Tenant for the following reason: “*I want possession of the rental unit for my child or parent.*” This reason is pursuant to clause 62(1)(c) of the Act.
4. On October 7, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application disputed the Eviction Notice.
5. The Tenant’s Application was heard by the Rental Office on November 7, 2023. The Rental Office issued Order LD23-520 on November 9, 2023, which terminated the tenancy agreement between the parties effective 5:00 p.m. on March 31, 2024 and directed the Tenant and all other occupants to vacate the premises by that date and time.
6. The Commission received a Notice of Appeal from the Tenant on November 29, 2023. The Tenant’s grounds of appeal included that subsection 64(4) of the Act should apply to the termination, and not subsection 62(1)(c).
7. The hearing was held before the Commission by way of telephone conference call. Participating for the Tenant were the Tenant herself and Calleen Gillis (“Ms. C. Gillis”). Participating for the Landlords were both Landlords, Charles Aten (“Mr. C. Aten”) and Michaela Flood (“Ms. Flood”).

3. DISPOSITION

8. The Commission allows the appeal and reverses Order LD23-520. The Commission finds that subsection 64(4) of the Act applies to this termination. Therefore, the termination and vacancy date is September 25, 2024, at 5:00 p.m.

4. ANALYSIS

9. The Tenant and her mother Ms. C. Gillis explained in detail the challenges faced in moving a mini-home from the Premises to a new site. They submitted that this was not feasible over the winter and spring months. They submitted that applying section 62 of the Act,

which requires only four months' notice, would be unjust and reveal a flaw or discrepancy in the Act.

10. The Landlords testified that their son Mr. C. Aten and his partner Ms. Flood will be building a home on the Premises. They have obtained a permit and ordered building materials in order to commence construction in the spring of 2024. The Landlords submitted it would be possible to move the Tenant's mini-home to a storage site prior to March 31, 2024 and then move the mini-home later from the storage site once a new site was obtained.
11. Mr. C. Aten and Ms. Flood confirmed they will be building a home on the Premises, with construction to begin in April 2024.
12. The Commission finds that the intent to build on the Premises is well supported and the Landlords are acting in good faith in terminating the tenancy agreement. However, the issue in this appeal is, in effect, the notice period the Tenant is entitled to under the Act. If subsection 62(1) of the Act applies to this termination, the minimum notice period is four months. On the other hand, if subsection 64(4) of the Act applies to this termination, as the Tenant suggests, the minimum notice period is 12 months.
13. Subsection 62(1)(c) permits a landlord to end a tenancy where they require possession of the rental unit for the purpose of residential occupation (for at least one year) by the landlord's child. The notice period for a termination under this section is a minimum of 4 months.
14. Subsection 64(1) permits a landlord to give a notice of termination if the landlord requires possession of the rental unit in order to:
 - (a) demolish the rental unit;
 - (b) convert the rental unit to a non-residential use; or
 - (c) subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.
15. Subsection 64(4) includes a specific notice period, of at least 12 months, for the termination of tenancy agreements with respect to a mobile home site, where the termination is in accordance with subsection 64(1).
16. In Order LD23-520, the rental office found it was appropriate for the Landlord to issue the notice of termination under subsection 62(1) because the landlords are not "demolishing the rental unit or converting it to non-residential use" but are taking possession of the rental unit for continued residential use by building a house on the land.
17. For the reasons that follow, the Commission disagrees with the rental officer's determination and finds that section 64 more appropriately applies where a tenancy agreement respecting a mobile home site is being terminated.
18. Clause 64(1)(a) applies where a landlord requires possession of the rental unit to demolish it. While the vacant parcel of land will not be "demolished" in the strict sense of the word,

it will nevertheless no longer exist in its present form and it would be impossible for the Tenant to move back onto the mobile home site.

19. This interpretation of “demolition” is consistent with a finding of the Ontario Superior Court in 2019 where the court accepted the approach of that province’s Landlord and Tenant Board¹ to applying interpreting the definition of demolition (see: *Two Clarendon Apartments Limited v Sinclair*, 2019 ONSC 3845):

6 *The Board concluded at paras. 13 and 14:*

*13. In a situation where the rental unit continues to exist, albeit in an extremely altered form, it is possible for the tenant to exercise a right of first refusal, because the rental unit is still there: the tenant may move back and continue the tenancy. **In a situation where the rental unit is gone, it is not possible for the tenant to exercise a right of first refusal: the rental unit is no longer there and so the tenant cannot move back. The fact that the Act distinguishes renovations and demolitions by the tenant's right of first refusal shows that the intention of these sections of the Act is to preserve tenancies where it is possible to do so.***

*14. Accordingly, a project will be defined as a renovation under the Act in a case where it is possible for the tenant to move back into the unit and **a project will be defined as a demolition where it is not possible for the tenant to move back into the unit.** [bold emphasis added]*

20. The Ontario Court found that the Board’s approach to the definition of demolition was reasonable and consistent with the Act and modern principles of statutory interpretation.
21. With this in mind, the Commission finds that the termination of the tenancy agreement in this appeal is a “demolition” per subsection 64(1)(a), because the Tenant will no longer be able to occupy the mobile home site. After the construction period, the owner’s son will eventually reside in a new home on the mobile home site. The site will effectively not be available for the tenant’s mobile home.
22. We also note that the Commission did consider whether subsection 64(1)(c), relating to repairs and renovations, could also be applied in this case, given that the mobile home site will be significantly renovated by way of construction of a new home. However, terminations pursuant to subsection 64(1)(c) are accompanied by a right of first refusal in favour of the tenant to occupy the rental unit when the repairs or renovations are completed (s. 68 of the RTA). That would no doubt produce unintended consequences in circumstances such as this case, as it will not be possible for the Tenant to occupy the mobile home site after the “renovation” is completed.

¹ We note that section 50 of Ontario’s *Residential Tenancies Act*, SO 2006, Ch. 17, is substantially similar to section 64 of PEI’s *Residential Tenancy Act* for these purposes.

23. Finally, the Commission is mindful that the Legislature saw fit to include special protections for tenants of mobile home sites, and therefore the Commission finds that applying section 64 in this case best attains the purpose of the legislation in providing a longer notice period to tenants facing no-fault evictions from mobile home sites. In this regard, the Commission takes notice that the moving of a mini-home or mobile home from one location to another location represents a significantly greater logistical challenge than moving furniture and possessions from one building to another.

24. For the above reasons, the appeal is allowed. The Commission reverses Order LD23-520, determines that subsection 64(4) of the Act applies, and establishes the termination and vacancy date as 12 months from the date of the Landlords' Notice, specifically September 25, 2024 at 5:00 p.m. The Landlord is obligated to compensate the Tenant in accordance with the relevant provisions of the Act.

5. CONCLUSION

25. The appeal is allowed. The Commission reverses Order LD23-520, determines that subsection 64(4) of the Act applies, and establishes the termination and vacancy date as 12 months from the date of the Landlords' Notice, specifically September 25, 2024 at 5:00 p.m.

IT IS ORDERED THAT

1. The appeal is allowed and Order LD23-520 is reversed.
2. The tenancy agreement between the parties shall terminate effective September 25, 2024 at 5:00 p.m.
3. The Tenant and all occupants shall vacate the Premises by September 25, 2024 at 5:00 p.m.

DATED at Charlottetown, Prince Edward Island, Tuesday, February 13, 2024

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Panel Chair

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

(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.