



Date Issued: February 13, 2024
Docket: LR23120
Type: Rental Appeal

INDEXED AS: Michelle Burns v. 102953 P.E.I. Inc.

Order No: LR24-04

BETWEEN:

Michelle Burns

Appellant

AND:

102953 P.E.I. Inc.

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 and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the tenancy should be terminated on December 28, 2023 at 5:00 p.m.

2. BACKGROUND

2. On November 1, 2020, Michelle Burns (the "Tenant") entered into a rental agreement with the former property owner for the premises located at 178 Weymouth Street, Apartment 3, Charlottetown PE (the "Premises"). The current owner of the Premises is 102953 P.E.I. Inc. (the "Landlord"). Rent for the Premises is \$836.00 per month with a security deposit paid of \$400.00.
3. The following forms were filed by the Landlord and the former landlord:
 - Form 4(A) Eviction Notice dated November 30, 2023 served by the former landlord.
 - Form 4(A) Eviction Notice dated December 2, 2023 served by the Landlord.
 - Form 2(B) Landlord Application to Determine Dispute received December 4, 2023 (the "Application"). The Application sought earlier termination, a determination that the Premises were sublet without the Landlord's written consent and a determination that the Tenant charged her subtenant more rent than permitted.
4. The Rental Office heard the Application on December 19, 2023. Despite efforts to contact the Tenant, the Tenant did not participate. The Rental Office found that the Premises were sublet without the consent of the Landlord or the former landlord and the Tenant charged the subtenant an unlawful rent increase in the amount of \$114.00. The Rental Office ordered that the tenancy between the Landlord and the Tenant be terminated effective December 28, 2023 at 5:00 p.m.
5. The Commission received the Tenant's Notice of Appeal on December 28, 2023. Following distribution of documents and Notice to the parties, the appeal was heard by the Commission by way of telephone conference call on January 17, 2024. The Tenant participated. Dane Cutcliffe ("Mr. Cutcliffe") participated as the representative of the Landlord.

3. DISPOSITION

6. The appeal is dismissed and Rental Office Order LD23-611 is upheld. The tenancy was terminated on December 28, 2023 at 5:00 p.m.

4. ANALYSIS

7. The Tenant testified that she had an urgent need to move out of the Province to attend to a family member and intended to ultimately return to the Premises. She testified that she entered into a sublet agreement with a third party, who she believe to be a suitable tenant. She advised the former landlord that she was subletting the Premises to an unnamed person. She then received an eviction notice from the former landlord. The subtenant

moved in to the Premises in early December and she then received another eviction notice, this time from the Landlord, on December 2, 2023. The Tenant advised that it was her understanding that ownership of the Premises changed hands on December 1, 2023. The Tenant stated that she had not received notice of the Rental Office hearing and thus did not participate in that December 19, 2023 hearing. She stated that the decision to terminate the tenancy was based on the actions of the subtenant on December 12, 2023 and she was not responsible for the subtenant's behaviour as the Landlord had evicted the subtenant and then changed the locks prior to December 12, 2023.

8. Mr. Cutcliffe testified that the original eviction was related to lack of consent for a sublet. He testified that the presence and behaviour of the subtenant prompted the request for an early eviction. He explained the details of the subtenant's behaviour and referenced video evidence with screenshots. He stated that he was first aware on December 2, 2023 that the subtenant and a companion were in the Premises. He stated that the subtenant and companion left the Premises with their possessions on December 3, 2023 shortly after the police had arrived at the Premises. He stated that the locks were then changed, and he contacted the Tenant to offer her, or a member of her family, the new key. He testified that the subtenant broke into the Premises on December 12, 2023. He became aware of the presence of the subtenant on December 13, 2023. He contacted the police. The subtenant refused entrance to the police and the police forcibly entered the Premises and arrested the subtenant and her companion. He noted that no rent has been paid for January 2024 and the Tenant disconnected electrical service. He stated that in mid to late December the possessions of the Tenant were moved by family members and a professional mover who were provided with a key. Mr. Cutcliffe described the actions of the Tenant as "premeditated and conspiratorial deceit".
9. The Commission rejects the notion that the Tenant's actions amounted to "premeditated and conspiratorial deceit". However, the Commission finds that the Tenant failed to follow the sublet provisions set out in the Residential Tenancy Act (the "Act") and the consequences of not obtaining the Landlord's consent to sublet are fully demonstrated here and thus reveal why it is essential that such provisions be firmly adhered to. Subsections 30(1) and (2) read:
 - a. *30. Tenant may sublet or assign rental unit with landlord's consent*
 - i. *A tenant may, with the written consent of the landlord, sublet or assign a rental unit or part of a rental unit to another person.*
 - b. *Landlord shall not unreasonably withhold consent*
 - c. *(2) A landlord shall not arbitrarily or unreasonably withhold consent to a sublet or assignment of a rental unit or part of it.*
10. In the present matter, the Tenant did not seek consent to sublet from either the former landlord or the Landlord, did not provide the name and contact information for the proposed subtenant and the subtenant moved in without permission. The Act requires consent from the landlord and the landlord shall not unreasonably or arbitrarily withhold

consent. With the identity of the subtenant unknown, it was entirely reasonable for the Landlord to withhold consent.

11. But for the events of December 2 and 3 as well as December 12 and 13, 2023, an **early** termination of the tenancy would not be warranted. Failure to obtain sublet permission cannot of itself justify **early** termination of the tenancy. However, failure to obtain a landlord's consent to sublet is of itself sufficient to trigger a termination of the tenancy with the usual statutory notice requirements; see clause 61.(1)(i) of the Act. Here, the actions of the subtenant, who was at least initially permitted on the Premises by the Tenant, justify an earlier termination of the tenancy by operation of subsections 61.(7), (8) and (9) of the Act.
12. Accordingly, the Commission agrees with the findings of the Rental Office in Order LD23-611, confirms that Order and this appeal is dismissed.
13. As the rent for the Premises appears to have been fully paid for the month of December 2023 and the tenancy has been terminated on December 28, 2023, the tenant, if she has not already done so, may wish to contact the Rental Office regarding the possibility of applying for a return of rent and for a return of the security deposit.

5. CONCLUSION

14. The Commission dismisses the appeal and confirms the findings of Rental Office Order LD23-611.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD23-611 is confirmed.**
3. **The tenancy ended on December 28, 2023 at 5:00 p.m.**

DATED at Charlottetown, Prince Edward Island, 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.