



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: February 29, 2024

Dockets: LR24009

Type: Rental Appeal

INDEXED AS:

Order No: LR24-07

BETWEEN:

Jarred Hayman

Appellant

AND:

Patrick Kiely

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner and
Panel Chair

M. Douglas Clow, Vice-Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

1. INTRODUCTION

1. This appeal was heard by the Commission on February 27, 2024. The Appellant has requested that the Commission determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that a tenant should be evicted for non-payment of rent.

2. BACKGROUND

2. On February 9, 2024, the Rental Office issued Order LD24-044, wherein the Rental Office ordered that the tenancy agreement was terminated effective February 16, 2024, at 5:00 p.m, having found that the tenant Jarred Hayman (the "Tenant") had outstanding rent owed to the landlord Patrick Kiely (the "Landlord"). The outstanding rent included the regular recurring monthly rent as well as \$613.00 for unpaid electricity bills for which the Tenant was responsible under the tenancy agreement. Pursuant to Order LD24-044, the Tenant and all occupants were ordered to vacate the premises located at 2596 Buntain Road, New Glasgow, PE (the "Premises") no later than February 16, 2024, at 5:00 p.m.
3. On February 14, 2024, the Tenant filed a Notice of Appeal with the Commission. The Tenant gave his reason for filing the appeal:

Not enough time to vacate the rental property.

4. The appeal was heard on February 27, 2024, by telephone conference call. The Tenant and the Landlord participated in the hearing.

3. DISPOSITION

5. The appeal is dismissed. Order LD24-044 is confirmed, subject to a correction in the finding of facts.

4. ANALYSIS

6. The Tenant testified that under the tenancy agreement rent is \$1,200 per month plus electricity. The Tenant moved into the Premises in October and paid rent in October (\$1,200) and November 2023 (\$1,200) plus \$500.00 in December. He acknowledges that he owes rent for the months of December 2023 and January and February 2024. He stated the Landlord put the \$500 payment made in December toward the electricity bill. He acknowledged that he is responsible for reimbursing the Landlord for the cost of electricity and owes money for electricity. He stated that he is looking for an additional week or so to find a new residence and stated he would pay up the rent soon.
7. The Landlord testified that the Tenant and his family moved in to the Premises on September 27, 2023. The Tenant paid the security deposit of \$1,200.00, paid rent of \$1,200.00 for October, rent of \$1,200 for November, and made a payment of \$500.00 in December which the Landlord applied to the outstanding electricity bills. The Landlord stated that he requested that the Tenant put the electricity into his own name; however, the Tenant never did so. The Landlord stated that the Tenant, as at the date of the

hearing, owes rent for December, January, and February, and also owes over \$1,000.00 in electricity bills.

8. Given that the Tenant admitted that rent is owed for at least the past three months, and some electricity bills are also owed, the Commission agrees with the Rental Office that the Landlord has established valid ground under subsections 60(1) and 60(6) of the *Residential Tenancy Act* (the “Act”). Pursuant to subsection 60.(1) of the Act, the earliest lawful termination date is 20 days after the Notice of Termination (Form 4A) is served on the Tenant. In this case the earliest possible termination date would have been January 26, 2024. The hearing before the Rental Office was held on February 2, 2024, Order LD24-044 was issued on February 9, 2024 and set out an eviction date of February 16, 2024, at 5:00 p.m. The Commission finds that the Rental Office provided the Tenant with more time to vacate the Premises than required by the Act. Accordingly, the Commission dismisses this appeal. In the circumstances, given that the Tenant has remained at the premises awaiting the outcome of this Appeal, the Commission adjusts the tenancy end date to February 29, 2024.
9. The Commission notes that there was a discrepancy in the facts testified to at the hearing, in comparison with the findings of fact of the Rental Office in Order LD24-044. Order LD24-044 identified the Landlord as testifying that rent had not been paid for November 2023, December 2023, or January 2024, although in the Landlord’s eviction notice dated January 6, 2024, he stated that the amount of rent owing was \$2,400 which equates to two months rent (presumably December and January rent) and which is consistent with the Landlord’s testimony before the Commission in that he stated that rent was owing for December, January, and now February.
10. It is noted that the discrepancy over whether rent was paid for November, 2023, is not directly relevant to this appeal, because the Landlord’s grounds for eviction is non-payment of rent under subsections 60(1) and 60(6) of the Act. The status of November, 2023, rent would have relevance if the Landlord needed to rely on subsection 61(1)(b), dealing with repeated lateness of rental payments, or if the Landlord’s application included an application for a determination of the amount of rent owing. The Landlord may proceed to file an application with the Rental Office for rent owed using the appropriate form and following the required procedure. The Landlord is encouraged to contact the Rental Office for procedural guidance with respect to the necessary forms (and timelines concerning filing and service) with respect to the security deposit.

5. CONCLUSION

11. The appeal is dismissed and Order LD24-044 is confirmed, subject to an adjustment of the tenancy end date to February 29, 2024.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-044 is confirmed, subject to item 3 below.**

3. The tenancy agreement between the parties shall terminate February 29, 2024 at 5:00 p.m. Accordingly, the Tenant and all occupants shall vacate the Premises by that date and time.
4. A certified copy of this Order may be filed in the Supreme Court and enforced by sheriff Services as permitted by the Act.

DATED at Charlottetown, Prince Edward Island, 29th day of February, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter

(sgd. M. Douglas Clow)
M. Douglas Clow

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.