



Date Issued: March 12, 2024
Docket: LR24001
Type: Rental Appeal

INDEXED AS: Cameron Apartments Inc. v. Heritage Awogbade
Order No: LR24-08

BETWEEN:

Cameron Apartments Inc.

Appellant

AND:

Heritage Awogbade

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

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on January 30, 2024 and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Landlord must pay the Tenant the net sum of \$1,229.39 by January 30, 2024.

B. BACKGROUND

2. On February 1, 2023, Heritage Awogbade (the "Tenant") entered into a tenancy agreement for the premises located at Apartment 314, 9 Royal Court, Charlottetown PE (the "Premises") with Cameron Apartments Inc. (the "Landlord"). Rent for the Premises is \$ 1400.00 per month with a security deposit paid of \$1400.00. The portion of the rent and security deposit attributable to the Tenant was \$700.00 and \$700.00 respectively.
3. In Order LD24-010, the residential Tenancy Officer (the "Officer") found that the Tenant owed the Landlord \$186.67 in rent for the pro-rated period of November 1 to 8, 2023. The Officer also found that the Landlord owed the Tenant double his portion of the security deposit plus interest, for a total of \$1,416.06. The Officer offset the two sums owing, for a net award to the Tenant of \$1,229.39.
4. On January 11, 2024 the Commission received a Notice of Appeal from the Landlord.
5. Following the circulation of the documents in evidence before the Officer, as well as additional documentation filed by the Landlord, the Commission heard the appeal by telephone conference call on January 30, 2024. Colleen Cameron ("Ms. Cameron"), representative of the Landlord, and the Tenant both participated.

C. DISPOSITION

6. The Commission dismisses the appeal and confirms Order LD24-010.

D. ANALYSIS

7. Ms. Cameron referred to her written submission, Exhibit A-1 found on pages 117 to 118 of the appeal file. She submitted that the Tenant did not fulfil his one-year contract, he paid only half-rent in October 2023 as he was living alone, he did not pay any rent in November 2023 although he stayed in the Premises from November 1 to November 8, and he did not leave the apartment in the same condition as when he moved in as there was damage and cleaning needed to be done. For this reason, she is of the view that Order LD24-010 is in error and she should be entitled to retain the security deposit funds of \$700.00.
8. The Tenant testified that the damage to the apartment was done by a co-tenant who was evicted by the Landlord. He stated that he had provided the Landlord with pictures showing the damage and yet the Landlord returned that co-tenant's portion of the security deposit to the co-tenant. He stated that he left the apartment clean. He submitted that since the Landlord evicted the co-tenant the Landlord was now responsible for finding a new co-tenant and thus he only needed to continue to pay his \$700.00 per month

proportionate rent. He submitted that the tenancy agreement was terminated effective November 8, 2023 by Order LD23-501 and he left the Premises in compliance with that Order.

9. The Commission finds that ordinarily a single tenancy agreement document with two or more tenants identified is a joint tenancy and each tenant is thus jointly and severally liable for the full amount of the rent due. However, the conduct of the parties must also be considered.
10. The Landlord's past practice of returning a proportionate amount of the security deposit when one of the two co-tenants moved out tends to imply separate tenancy agreements despite the single document and thus the tenants were tenants in common, despite a single tenancy agreement document, rather than joint tenants.
11. However, what really is determinative in the view of the Commission is the further conduct of the Landlord. The Landlord had evicted the co-tenant but did not at the same time evict the Tenant. The Commission finds that the act of evicting one co-tenant had the effect of severing any previous joint tenancy that may have existed, thus leaving the Tenant only responsible for his portion of the rent and leaving the Landlord responsible for finding a new co-tenant.
12. The Landlord submits that the Tenant did not fulfill his one-year rental contract by not paying the rent for the full premises. The Commission finds that the Tenancy ended early due to the actions of the Landlord, specifically, in taking steps to have him evicted after he paid only his share of the rent for October 2023 and he was ordered to leave by the Rental Office in Order LD23-501. She initiated the termination of the tenancy agreement and therefore it is inaccurate to state that he did not fulfill the agreement.
13. As the Landlord failed to file an application for retention of the security deposit with the Rental Office within the required 15-day timeframe, subsection 40(4) of the Residential Tenancy Act applies, requiring the Landlord to pay double the security deposit.
14. Accordingly, the Commission agrees with the findings and outcome of the Officer in Order LD24-010 and confirms that Order and this appeal is dismissed.

E. CONCLUSION

15. The appeal is dismissed and Order LD24-010 is confirmed.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD24-010 is confirmed.**
- 3. The Landlord must pay the Tenant the net sum of \$1,232.44 forthwith.**

DATED at Charlottetown, Prince Edward Island, Tuesday, March 12, 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.