



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: March 22, 2024

Docket: LR24003

Type: Rental Appeal

INDEXED AS:

Order No: LR24-11

BETWEEN:

K.D.

Appellant

AND:

J.L.

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

A. INTRODUCTION

1. This appeal was heard by the Commission on February 15, 2024 and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenancy agreement be terminated early pursuant to clauses 61.(8)(a) and (b) of the Residential Tenancy Act (the “Act”). .

B. BACKGROUND

2. In Order LD24-011 dated January 12, 2024, the Rental Office ordered that the tenancy agreement between the tenant **K.D.** (the “Tenant”) and the landlord **J.L.** (the “Landlord”) be terminated effective January 19, 2024 at 5:00 p.m.
3. The rental property in question is **[Redacted]** (the “Premises”).
4. On January 18, 2024, the Commission received a Notice of Appeal from the Tenant.
5. The hearing was originally scheduled for February 13, 2024. It was re-scheduled to February 15, 2024.
6. The hearing was held on February 15, 2024 by telephone conference call. The Tenant was present on the call. The Landlord was also present on the call. Spencer Campbell, K.C. (“Counsel”) represented the Landlord.
7. At the hearing, it was agreed that both parties would have the opportunity to file additional written evidence and submissions. The last written submission was received on February 27, 2024.

C. DISPOSITION

8. The appeal is allowed in part. The portion of Order LD24-011 dealing with the early termination of the rental agreement is reversed. The portion of Order LD24-011 dealing with rent owing is varied by updating the rental arrears.

D. ANALYSIS

9. The Landlord testified that he had received a telephone call from the police in December 2023. The police were seeking to apprehend an individual suspected to be in the Premises (the “Individual”). The police asked the Landlord for keys and the Landlord complied with the request. The Landlord testified that the police had told him that they might have to use force such as smoke bombs and breaking down doors. The Landlord then started receiving messages to avoid the area near the Premises. The Landlord also received pictures from neighbours showing barricades, police in vests with a SWAT vehicle and weapons in the vicinity of the Premises. The Landlord was later advised by the police that they did not need to break in and the Individual was apprehended. The Landlord testified that the other tenants in the building did not witness the incident as they were away at the time. The Landlord acknowledged that he never believed the Individual

was living there; rather, he believed the Individual was visiting. The Landlord acknowledged that he was not present or near the Premises during the incident and that the matter was resolved swiftly.

10. The Landlord stated that, as of the hearing date, the Tenant owes \$1250.00 in rent.
11. In his post-hearing written submission, Counsel confirmed that \$1250.00 was owing in rent at the time of the hearing. Counsel noted that an additional \$765.00 in rent would be due on March 1, 2024. The Tenant was given the opportunity to rebut and did not do so.
12. The Tenant testified that they had a guest who stayed for a couple of days. When the guest arrived the Tenant felt “put on the spot” as their guest told them they had no place to go and so the Tenant told their guest that they could come over. The Tenant had only known their guest for two months before the incident. The Tenant noted that their guest left the Premises when requested to do so by the police. The Tenant stated that the police did not enter the Premises. The Tenant testified that they fully cooperated with police.
13. Counsel submitted that the Rental Office made the correct decision in Order LD24-011 referring to the legislation. Highlights of Counsel’s written submissions include:
 - The landlord’s application is made pursuant to s.61(7) of the RTA and the only relevant issue is whether the landlord has met the test set out in s. 61(8).
 - At the hearing, questions were asked about what [the Individual] had done while at the property. In our submission, a person permitted on a residential property does not necessarily have to do something overt such as threatening a landlord in order for the test in the statute to be met. Sometimes the mere presence of the individual can create a dangerous situation. A classic example of this would be if the person was wanted by the Police. It is important to remember that the statute does not require that the tenant know that the person permitted on the residential property was wanted by the Police or that the person even know that he was wanted by the Police.
 - In our submission other sections of 61(8) are also met. For example, 61(8)(iii) refers to putting “the landlord’s property at significant risk”. Being advised that doors could be broken down, smoke bombs used, and having your property surrounded by armed police more than meets this test. Once again, it is important to consider the wording of the statute. The fact that doors ultimately did not have to be broken down or other more invasive methods did not need to be used by Police does not matter. The presence of [the Individual] resulted in a major Police event at the property where quite frankly anything could have happened. The property was placed at significant risk.
 - Although the statute does not speak to future concerns, it is important to note that the continued presence of [the Tenant] in this unit does raise concerns on the part of the landlord about [the Individual’s] potential return to the building. Despite [their] evidence that [they] ha[ve] no contact with [the Individual], [the Tenant] does appear to know quite a bit about the status of [the Individual’s] Court proceeding, noting at one point that [x of y] charges against [the Individual] had been withdrawn and in [their] latest submission stating that [the Individual] is “still awaiting [their]

court date and all the evidence has not been submitted yet.” To our knowledge, that level of detail about [the Individual’s] case is not widely known.

14. Subsection 61(7) and (8) of the Act read:

Landlord may request earlier termination date

(7) Despite subsection (3), a landlord who wishes to give notice of termination under subsection (1) may make an application to the Director to request an order

(a) ending a tenancy on a date that is earlier than the tenancy would end if the notice of termination were given under subsection (1); and

(b) granting the landlord an order of possession in respect of the rental unit.

Requirements for earlier period of notice

(8) The Director shall grant an application under subsection (7) only if the Director is satisfied that

(a) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(iii) put the landlord’s property at significant risk,

(iv) engaged in illegal activity that

(A) has caused or is likely to cause damage to the landlord’s property,

(B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord,

(v) caused unreasonable damage to the residential property, or

(vi) frustrated the tenancy agreement; and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.

Emphasis added.

16. With respect to the matter of unpaid rent, the Commission finds that the Tenant owes \$485.00 for January 2024, \$765.00 for February 2024 and \$765.00 for March 2024 for a total rent owing of \$2015.00. The Commission notes that the Landlord has not, to date, applied for termination of the tenancy on the basis of unpaid rent. Therefore, the Commission can only order the payment of rent in the amount of \$2015.00 and cannot order the termination of the tenancy solely on the basis of unpaid rent.
17. The essence of the Landlord's position is that the situation which unfolded as described in the facts presented to the Commission justify an early termination under subsections 61.(7) and (8) of the Act.
18. The Commission acknowledges that the event described by the parties was a significant event. In addition, the Commission finds that the Individual was permitted on the Premises by the tenant.
19. While the event was significant, the legislation requires that there be a significant interference or an unreasonable disturbance on a landlord.
20. This appeal presents a very unique set of facts and the application of subsections 61.(7) and (8) are highly fact dependent. The onus is on a landlord to establish that the facts justify a termination of a tenancy agreement. The legislation allows for the termination of a tenancy agreement where a landlord receives a significant interference or an unreasonable disturbance from a person permitted on the residential property by the tenant.
21. Termination of a tenancy agreement is a very serious matter and the evidentiary bar must be set high where it is based on the actions of a person permitted on the property by the tenant. Here, the Individual left the Premises upon the request of police. No harm was done to the Landlord's property or other tenants.
22. The evidence in the present appeal suggests that any interference with, or disturbance to, the Landlord was a result of communications between the Landlord and police over the phone as well as photos provided by neighbours. The Commission finds on the basis of the factual evidence before it, these facts do not rise to the level of being a significant interference or unreasonable disturbance in accordance with Subsections 61(8).
23. The Commission finds that, based on the particular facts of this appeal, a termination of the tenancy is not justified by the evidence.

E. CONCLUSION

24. The appeal is allowed in part. The Commission reverses the termination of the tenancy agreement ordered in Order LD24-011 but confirms that rent is owed and varies the finding on rent owed.

IT IS ORDERED THAT

1. The appeal is allowed in part.
2. Order LD24-011 is, with respect to the termination of the tenancy agreement, reversed. The tenancy agreement remains in effect.
3. Order LD24-011 is varied with respect to the amount of rent owed, which is now calculated as \$2015.00, representing rent owing for the months of January, February and March 2024 as described in this Order. The Tenant must pay the sum of \$2015.00 to the Landlord forthwith.

DATED at Charlottetown, Prince Edward Island, 22nd day of March, 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.