



Date Issued: March 26, 2024
Docket: LR24007
Type: Rental Appeal

INDEXED AS:
Order No: LR24-12

BETWEEN:

Yue Su

Appellant

AND:

Terry Mitchell

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. In this appeal, which was heard by the Commission on February 27, 2024, the Appellant Yue Su (the “Tenant”) asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenant was not entitled to compensation.
2. The applicable legislation is the *Residential Tenancy Act* (the “Act”).
3. The rental unit in the matter is located at 45 Villa Avenue, Charlottetown, PE (the “Premises”).

B. BACKGROUND

4. On January 18, 2024 the Rental Office issued Order LD24-020. The Rental Office allowed the application of the Tenant in part. The Rental Office ordered that Terry Mitchell (the “Landlord”) pay to the Tenant the sum of \$3,647.97, representing double the \$1,800.00 security deposit plus interest calculated to January 18, 2024 in the amount of \$47.97.
5. The Tenant also applied for compensation in the amount of \$2,593.50 for one month’s rent (\$1,800.00) and moving expenses (\$793.50). The Rental Office denied the Tenant’s application for compensation on the basis that the *Act* was silent on a tenant’s right to compensation in situations where a Tenant provides early notice for being evicted pursuant to clause 62(a) of the *Act*. These reasons will be explored in further detail in the Analysis section of the Commission Order.
6. The Commission received the Tenant’s appeal on January 30, 2024.
7. The appeal was heard on February 27, 2024 by way of telephone conference call. The Tenant participated in the hearing and represented himself. Daniel Mitchell (“Mr. Mitchell”) represented the Landlord. Robert Johnson offered evidence on behalf of the Landlord.

C. DISPOSITION

8. The appeal is allowed. The Commission reverses the finding of the Rental Office in Order LD24-020 on the matter of the denial of compensation. The Commission finds that the Tenant is entitled to compensation under section 72 of the *Act*. The fact that the Tenant moved out of the Premises one month early does not affect the entitlement to compensation. The Tenant is therefore awarded compensation of \$2,593.50 comprised of one month’s rent in the amount of \$1,800.00, plus moving expenses in the amount of \$793.50. In addition, the Commission confirms the previous Rental office award to the Tenant in the amount of \$3,647.97, representing double the \$1,800.00 security deposit plus interest calculated to January 18, 2024 in the amount of \$47.97.
9. As both parties acknowledge that the Landlord attempted to pay the \$3,647.97 by e-transfer to the Tenant on January 24, 2024 and the Tenant refused to accept the transfer, the Commission will not update the calculation of interest on the security deposit.

D. ANALYSIS

10. The Tenant submitted that the Landlord made several requests for him to move out, he was served with a Notice of Eviction on August 15, 2023 (which specified an end date for the tenancy of December 15, 2023), and that he and his family were, over an extended period of time, under considerable pressure from the Landlord to move out as rapidly as possible. The Tenant was able to secure new accommodations and moved out of the Premises on November 15, 2023, which was one month earlier than the date set out in the Landlord's eviction notice.
11. The Tenant submitted that section 72 of the *Act* provides compensation where a landlord evicts a tenant for personal use and this should apply where a tenant leaves earlier than the specified eviction date. The Tenant submitted that the *Act* should be read in an expansive interpretation to reflect fairness. The Tenant acknowledged that the Landlord attempted to pay him the sum he was awarded in Order LD24-020 but he refused to accept the e-transfer as he was pursuing the appeal.
12. Mr. Mitchell submitted that the Landlord required the property for her own use as she needed to move from her other property in Kings County to the home the Tenant was occupying in Charlottetown. He also submitted that the Tenant was treated very fairly and that compensation was not applicable as set out in Order LD24-020 as the Tenant moved out of the Premises one month early. Mr. Mitchell submitted that on January 24, 2024 the Landlord had e-transferred the \$3,647.97 awarded by the Rental Office to the Tenant; however, the Tenant refused to accept the funds.
13. The Commission finds that both parties agree to the award of \$3,647.97 and thus the Commission confirms that portion of Order LD24-020. As the Landlord tried to pay this sum to the Tenant shortly after the Order was issued, that sum stands without updating the interest component.
14. What remains to be decided is whether compensation can be awarded to the Tenant under section 72 of the *Act*. Section 72 states as follows:

72. Compensation for personal use

A landlord shall compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to one month's rent plus reasonable moving expenses in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant. 2022,c.88,s.42.

15. Section 62 pertains to situations such as the present one where a landlord seeks possession for themselves.
16. At issue on this appeal is the following finding of the Rental Office:

[12] The Officer does not find that the Tenant has established he is entitled to compensation. The Officer notes that the Act is silent on a tenant's right to compensation if they provide early notice for being evicted pursuant to subsection 62.(a) of the Act. Subsection 69.(3) explicitly provides an exception under "this section" meaning section 69 (right to provide early notice) for a tenant to receive

compensation under section 70 (repairs or renovations). However, the Act does not include a similar clause for compensation with regards to section 71 (demolition or conversion) or section 72 (personal use). Therefore, the Officer is unable to award the Tenant's request for compensation and this part of the Application is denied.

17. Section 69 reads:

RIGHT TO PROVIDE EARLY NOTICE

69. Tenant may end tenancy early following notice

(1) Where a landlord gives a tenant a notice of termination of a tenancy under section 62, 63, 64, 66 or 67, the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice of termination on a date that is earlier than the effective date of the landlord's notice; and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

Landlord shall refund rent

(2) Where the tenant paid rent before giving a notice of termination under subsection (1), on receiving the tenant's notice, the landlord shall refund any rent paid for a period after the effective date of the tenant's notice.

Right to compensation

(3) A notice of termination under this section does not affect the tenant's right to compensation under section 70.

Notice requirements

(4) The requirements of section 53 apply to notice required to be given under this section. 2022,c.88,s.69.

Emphasis added.

18. It appears that the Rental Office determined that because subsection 69(3) only referred to section 70 and not sections 71 or 72 as well; a tenant's right to compensation may be negated where early notice is provided by the tenant in circumstances where section 71 or 72 apply. The Commission disagrees with this interpretation. While section 69 may not make specific reference to an eviction under section 62 triggering compensation under section 72, neither section 69 nor the Act in general contain a provision that would result in a tenant's right to compensation for a section 62 eviction being lost as a result of the tenant, subsequent to receiving the notice of eviction, engaging the process under section 69 for terminating the tenancy early. The wording of section 72 is clear in that the Tenant's entitlement to compensation is tied to the fact that the Tenant was served with the notice of eviction by the Landlord who wanted possession of the rental unit for her own use.

19. There is no provision in the *Act* which makes reference to such compensation being negated by a tenant serving a notice of early termination to the landlord. In this case, the parties agree that the Tenant received a notice of termination under section 62 of the *Act* because the Landlord required the property for her own use. Given that the Tenant received such a notice, section 72 applies and the tenant is entitled to compensation
20. While it is not the Commission's role to determine why Legislature saw fit to make the specific reference in section 69 to compensation under sections 70, but not under sections 71 and 72. It may be that section 70, with its several categories and reference to "*the tenant does not give the landlord notice under subsection 68(2)*" was more complicated and possibly open to misinterpretation and thus the Legislature believed that clarification was advisable. Sections 71 and 72, by contrast, are simple, clear and straightforward and thus did not need the clarification given in subsection 69.(3). Regardless, on a basis of analyzing the *Act* as a whole as well as the provisions directly related to the Tenant's application for compensation, the Commission finds that the entitlement to compensation was triggered when the notice of eviction was received by the Tenant, and nothing in the *Act* specifically discharges the Landlord's obligation to pay such compensation, including the Tenant vacating early.
21. Accordingly, the Commission allows the appeal, and finds that section 72 compensation is available to a tenant whether or not a tenant provides early notice.

E. CONCLUSION

22. The appeal is allowed. The Commission reverses the finding of the Rental Office in Order LD24-020 with respect to the denial of compensation and finds that the Tenant is entitled to compensation under section 72 of the *Act*. Order LD24-020 is, however, confirmed with respect to the payment of double the security deposit plus interest. As the Landlord tried to pay the amount awarded in LD24-020 to the Tenant but the Tenant refused payment, the Commission declines to update the interest to the issuance date of this present Order.

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **The Landlord shall pay the Tenant the total sum of \$6,241.47 as identified below:**
 - **One month's rent in the amount of \$1,800.00, plus moving expenses in the amount of \$793.50, pursuant to section 72 of the *Act*;**
 - **The award of \$3,647.97 established by the Rental Office in Order LD24-020, representing double the \$1,800.00 security deposit plus interest calculated to January 18, 2024 in the amount of \$47.97, is confirmed.**
3. **The above sum of \$6,241.47 shall be paid by the Landlord to the Tenant on or before April 30, 2024.**

DATED at Charlottetown, Prince Edward Island, 26th day of March, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner and 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:

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.