



Date Issued: April 10, 2024
Docket: LR24015
Type: Rental Appeal

INDEXED AS:
Order No: LR24-14

BETWEEN:

Randy Pitre and Wayne Richards

Appellants

AND:

Lester Jinks and Dawn Shea

Respondents

ORDER

Panel Members:

Kerri Carpenter, Commissioner and
Panel Chair
M. Douglas Clow, Vice-Chair

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(Sgd.) Susan Jefferson

Commission Administrator

1. INTRODUCTION

1. This appeal was heard by the Commission on March 19, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that it did not have jurisdiction to hear an application.
2. The applicable legislation is the Residential Tenancy Act (the “Act”).

2. BACKGROUND

3. The appellants are Randy Pitre and Wayne Richards (the “Appellants”). In Order LD24-046, dated February 16, 2024, the Rental Office made the following finding:

“The Officer finds that the Applicants are not “tenants” as defined in the Act. Further, as the tenancy agreement has been terminated by the Commission in Order LR23-68, and that Order LR23-68 has not been stayed pending appeal, there is no tenancy and therefore no rights and obligations flowing from the Act. Put another way, the Act does not apply in these circumstances.”

4. On February 29, 2024, the Appellants filed an appeal of Order LD24-046 with the Commission.
5. The appeal was heard on March 19, 2024 by way of telephone conference call. Randy Pitre (“Mr. Pitre”) represented the Appellants. Lester Jinks and Dawn Shea (the “Respondents”) represented themselves. Cathy MacPhail and Blair MacPhail were present on the conference call on behalf of the Respondents.

3. DISPOSITION

6. The appeal is dismissed and Order LD24-046 is confirmed. The Appellants are not tenants as defined in the Act.

4. ANALYSIS

7. Mr. Pitre made numerous submissions. The essence of his position is that following the issuance of Commission Order LR23-68 he applied to the Court of Appeal for an extension of time to file an appeal and he also applied to the Court of Appeal for a stay of Commission Order LR23-68. It is his position that until the Court of Appeal rules on those applications, the filing of those applications suspends the effect of Commission Order LR23-68 and therefore the Appellants are tenants under the Act.
8. The Respondents submit that the Appellants ceased to be tenants on November 30, 2023 as Order LR23-68 terminated the rental agreement effective on that date and the Court of Appeal did not order that Order LR23-68 be stayed.
9. In Order LR23-68, dated November 2, 2023, the Commission ordered the following:

“IT IS ORDERED THAT

1. *The appeals of Orders LD23-338 and LD23-395 are allowed, in part.*
 2. *The tenancy agreement is terminated as of November 30, 2023 at 5:00 p.m. The Tenants shall vacate the Premises by this date and time.*
 3. *The Tenants shall pay to the Landlord the amount of \$13,700 by November 30, 2023 at 5:00 p.m.*
 4. *No rent is owing for November 2023.*
 5. *A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.”*
10. As is the Commission’s practice, a NOTICE was printed on the last page of Order LR23-68 informing the parties of subsections 89(9), (10), and (11) of the Act. Pursuant to subsection 89(9), both parties were made aware that they had within 15 days of the Commission’s decision to appeal to the Court of Appeal on a question of law only.
 11. The Appellants appear to contend that by applying to the Court of Appeal for a stay of Order LR23-68, and having applied to the Court of Appeal for an extension of time to file an appeal, Order LR23-68 was stayed until the Court of Appeal ruled on the applications before it.
 12. The Commission rejects the position of the Appellants and agrees with the reasoning set out in Order LD24-046. While there is an automatic stay provision specifically set out in the Act when a decision of the Rental Office is appealed to the Commission, there is no such automatic provision where a Commission decision is appealed to the Court of Appeal. A Commission decision is only stayed if the Court of Appeal grants a stay.
 13. As Order LR23-68 was not stayed by the Court of Appeal, it continued in effect and the tenancy agreement was terminated on November 30, 2023 at 5:00 p.m. After that time, there was no longer a tenancy agreement between the parties and there was no longer a landlord and tenant relationship between the parties. Accordingly, the Rental Office correctly dismissed the Appellants’ application.
 14. Subsequent to the hearing of this appeal, the Court of Appeal issued its decision in *Pitre & Richards v Shea & Jinks, Island Regulatory & Appeals Commission*, 2024 PECA 7 (CanLII), <https://canlii.ca/t/k3lv6>. The Court concluded:

“Conclusion on assessment of whether the court should grant an extension of time

[39] The Residential Tenancy Act has limited the scope of appellate review to questions of law relating to the Commission’s decision. Although the applicants frame most grounds of appeal as questions of law they are questions of fact. The issue of procedural fairness, when examined, is not an arguable issue. The applicants are asking this Court to rehear the appeal that was before the Commission. That is not the role of this Court.

[40] In summary, the application for an extension of time to file an appeal in this matter is dismissed. Finding that determination, it follows that, in this matter, it is unnecessary to deal with the application for a stay of proceedings.

Stay of proceedings

[41] *There is no statutory authority contained in the Residential Tenancy Act that would provide the applicants with a stay of proceedings that automatically stays a Commission order appealed to the Court of Appeal.*

[42] *The filing of a Notice of Application requesting an extension of time to file an appeal and for a stay of proceedings does not operate to provide the applicants with a stay of proceedings.*

Effect of filing Commission order

[43] *The Residential Tenancy Act provides that where the Commission has confirmed, reversed, or varied an order of the Director, the landlord or tenant may file the order in the Supreme Court, and that where an order is filed, it may be enforced as if it were an order of the Supreme Court (s. 89(9) and 89(11)). As stated earlier, there is no statutory authority contained in the RTA that provides for an automatic stay of proceedings of the Commission Order to the Court of Appeal. As such, terms of the order were enforceable on November 2nd, 2023.*

15. The Court of Appeal then went on to specifically cite the terms of Commission Order LR23-68.
16. Accordingly, the Commission denies the Appellants' appeal of Rental Office Order LD24-046.

5. CONCLUSION

17. The Commission finds that the Rental Office was correct in dismissing the Appellants' application.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Rental Office Order LD24-046 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Wednesday, the 10th day of April, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commission 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.