



Date Issued: April 24, 2024
Docket: LR24014
Type: Rental Appeal

INDEXED AS:
Order No: LR24-20

BETWEEN:

Lisa Roy

Appellant

AND:

Daryl Wight

Respondent

ORDER

Panel Members:

M. Douglas Clow, Vice-Chair

Kerri Carpenter, Commissioner

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 March 19, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenant acting as a landlord shall return rent to a subtenant.

B. BACKGROUND

2. Lisa Roy is a tenant (the “Tenant”) of the residential premises located at 33 Balderstone Court, Stratford PE (the “Premises”). The Tenant had rented out the basement of the Premises (the “Unit”) to a subtenant Daryl Wight (the “Subtenant”) by way of a verbal month to month agreement effective August 1, 2023. Rent for the Unit was \$850.00 per month, due on the first day of each month. No security deposit was required or paid.
3. At the hearing before the Rental Office, the Tenant did not attend nor have a representative attend. The Subtenant did attend. In Order LD24-039 dated February 2, 2024, the Rental Office determined that rent paid for the month of November 2023 be prorated based on occupancy from November 1 to 8 the balance, \$626.44 to be returned to the Subtenant. The Rental Office also ordered that the Subtenant was entitled to return to the Unit to retrieve his personal belongings forthwith.
4. On February 20, 2024 the Commission received a Notice of Appeal from the Tenant. The Tenant disputed the return of rent in the amount of \$626.44 awarded to the Subtenant in Order LD24-039.
5. The appeal hearing was held on March 19, 2024, by telephone conference call. The Tenant participated and called Michaela Roy (“Ms. Roy”) as a witness. The Subtenant also participated.

C. DISPOSITION

6. The appeal is dismissed and Order LD24-039 is confirmed.

D. ANALYSIS

7. The Tenant testified as to the reasons why she required the Subtenant to move out of the Unit. She testified that, while the Subtenant had called the RCMP, she spoke with the RCMP and they said to her that the Subtenant should not be allowed back. She stated that due to damage and missing items she felt justified retaining all of the November rent even though she required the Subtenant to leave the Unit on November 8, 2024. She stated that the damage and missing items would exceed \$626.44 but she was prepared to “cut her losses”. She acknowledged she did not have receipts for repairs as the damage had not been fixed yet as money was tight.
8. Ms. Roy testified that she had previously lived in the Unit. She testified that the Subtenant had been using some of her things left in the Unit, such as some furniture and a microwave. She stated that the Subtenant had come and taken two truckloads of his things before she had a chance to get all the items removed from the unit and outside.

She stated that his bed and a table along with some boxes are sitting in the garage. She also testified as to the Subtenant's behaviour.

9. The Subtenant denied any behaviour issues.
10. He stated that it took six truckloads to move all of his things in to the Unit when he moved in. He stated that the Unit was not painted or sanded and he did the walls, ceiling and floor with his paint and his time. He stated that he wanted his money ordered in Order LD24-039 returned to him and he wanted the remainder of his possessions.
11. The Commission finds that the pro-rated November rent was not a security deposit and cannot be retained by the Tenant as she evicted the Subtenant on November 8, 2023. In addition, the Tenant's allegations of damage and missing items were not supported by receipts. The Commission also finds that some of the Subtenant's possessions are still located on the Premises, having been removed from the Unit, and the Subtenant should have access to retrieve them in compliance with Order LD24-039.
12. The Commission agrees with the reasoning set out by the Rental Office in Order LD24-039 and therefore the appeal is dismissed and Order LD23-039 is confirmed.
13. The Commission directs that, given the problematic relationship between the parties, the Subtenant should contact the Rental Office to coordinate arrangements to retrieve his remaining possessions.

E. CONCLUSION

14. The appeal is dismissed and Order LD24-039 is confirmed.

IT IS ORDERED THAT

- 1. The appeal is dismissed and Order LD24-039 is confirmed.**
- 2. The Tenant, acting as a landlord, shall return pro-rated rent in the sum of \$626.44 to the Subtenant forthwith.**
- 3. The Subtenant should contact the Rental Office to co-ordinate the retrieval of his remaining possessions to facilitate the Tenant's compliance with Order LD24-039.**

DATED at Charlottetown, Prince Edward Island, 24th day of April, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)
M. Douglas Clow, Vice Chair

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner

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.