



**Date Issued:** June 27, 2024  
**Dockets:** LR24030  
**Type:** Rental Appeal

INDEXED AS: Ashley Kingate v Cavendish Beach Music Festival Inc.  
Order No: LR24-34

**BETWEEN:**

Ashley Kingate (the "Tenant")

**Appellant**

**AND:**

Cavendish Beach Music Festival Inc. (the "Landlord")

**Respondent**

---

## ORDER

---

Panel Members:

M. Douglas Clow, Acting 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 May 21, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the tenancy agreement between the parties shall be terminated and that the Tenant shall vacate the premises.

## B. BACKGROUND

2. This appeal concerns a residential property located at 37 Forest Hills Lane, Cavendish, PEI (the "Rental Unit").
3. The parties entered into a tenancy agreement several years ago. Rent was \$862.00 each month. A security deposit was not required.
4. On April 16, 2024 the Landlord filed a Landlord Application to Determine Dispute (Form 2(B)) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application sought:
  - (a) Vacant possession of the Rental Unit and an order for the Sheriff to put the Landlord in possession; and
  - (b) An order for outstanding rent in the amount of \$5,254.00.
5. Attached to the Application was an Eviction Notice (Form 4(A)) served by the Landlord to the Tenant on March 21, 2024, effective April 11, 2024 (the "Eviction Notice"), for the following reasons:

*You have not paid your rent in the amount of \$5254; and*

*You are repeatedly late in paying rent.*

*Particulars of termination:*

  - *Property is also a mess. Multiple notices from municipality.*
  - *Tried to work with tenant to settle rent owed.*
6. The Rental Office issued two orders. Order LD24-138 found that the Eviction Notice was valid and terminated the tenancy effective May 3, 2024. Order LD24-139 found that the Tenant owed rent totaling \$5,254.00 and ordered payment to the Landlord by May 16, 2024.
7. On April 30, 2024, the Tenant filed a Notice of Appeal with the Commission.
8. The Commission heard the appeal on May 21, 2024, by way of telephone conference. The Tenant, Ashley Kingate, participated. The Landlord, Cavendish Beach Music Festival Inc. was represented by Sam Murphy and Paul Murphy.

## **C. DISPOSITION**

9. The appeal is dismissed. Order LD24-138 and Order LD24-139 are confirmed, subject to a variation in the termination date and amount of outstanding rent owed, respectively.

## **D. SUMMARY OF EVIDENCE**

### **Tenant's Evidence**

10. At the hearing, the Tenant testified that she had missed the hearing before the Rental Office because she was unavailable for personal reasons and had, therefore, not received the Eviction Notice nor any notice of Rental Office hearing.
11. She testified that in the fall of 2023, the Landlord had agreed to allow her to pay outstanding rental arrears in instalments. They agreed she would pay \$1,150/month, made up of monthly rent of \$862, plus \$288 towards arrears. She testified that she paid \$1,150/month from the time of that agreement until she was unavailable for personal reasons in mid-March 2024. She agreed that she had not yet paid any amount for March, April or May 2024.

### **Landlord's Evidence**

12. The Landlord testified that the Eviction Notice served in March 2024 was the third notice delivered to the Tenant in recent years.
13. The documentary evidence submitted by the Landlord included several email exchanges with the Tenant, beginning in November 2023, with respect to overdue rent payments. As of November 6, 2023, the rental arrears totalled \$5,544. The emails detail the agreement made by the parties on November 16, 2023, whereby the Tenant would pay \$1,150/month towards monthly rent and outstanding arrears. The email from the Landlord states that if the agreement is not met, they would serve another eviction notice and there would be no more chances.
14. The emails show that in December 2023, the Tenant asked that rent be paid on the 20<sup>th</sup> of each month for financial reasons. The Landlord agreed, and again reiterated the terms of the agreement to repay the arrears.
15. The Landlord agreed with the Tenant's testimony that she paid \$1,150 in November 2023, December 2023, January and February 2024.
16. However, the Landlord testified that he emailed the Eviction Notice to the Tenant on March 21, 2024, one day after rent was due, and not paid, for March 2024. On April 16, 2024, the Landlord filed the Application seeking vacant possession and an order for outstanding rent and emailed the Application to the Tenant. Email confirmation of both of these were in evidence before the Commission.
17. At the hearing, the Landlord testified that the amount owing as of that date was \$6,978.00. This amount is comprised of the outstanding arrears, plus rent for March, April and May 2024. The Landlord also submitted an accounting of the amount owing into evidence.

18. The Landlord also provided some evidence with respect to the condition of the property.

## **E. ANALYSIS**

19. As a preliminary comment to the analysis and finding that follow, we note that near the end of the hearing of this appeal before the Commission, the parties came to an agreement that the Landlord would agree to continue the tenancy agreement between the parties if the Tenant (1) paid \$3,450.00 (being rent and arrears for March, April and May 2024) by May 24, 2024, and (2) continued on with the payment plan to catch up on the remaining outstanding arrears. The Landlord also requested that the Tenant clean up the property. The Tenant agreed with the terms of this settlement. As a result, the Commission agreed to hold the appeal in abeyance, and not issue an Order, until such time as the parties advised that the settlement agreement was upheld.

20. On Monday, May 27, 2024, at approximately 2:30pm, the Commission was advised by the Landlord via email (cc'd to the Tenant) that no payment was received from the Tenant and asked the Commission to issue an order. The Tenant did not provide any response to the Landlord's update that the agreed upon amount remained unpaid. Therefore, the evidence before us is undisputed that the Tenant did not satisfy the terms of the agreement made at the May 21, 2024, hearing, and we will proceed to issue an order on the merits of this appeal.

21. Where a landlord seeks to terminate a tenancy, it is the landlord's burden to prove, on a balance of probabilities, that the tenancy was terminated in accordance with the *Residential Tenancy Act*. In this case, the Landlord sought to evict the Tenant on two primary grounds: unpaid rent (s. 60) and repeatedly late rent payments (s. 61(1)(b)). Those two grounds will be discussed below.

22. First, we are satisfied that the Landlord complied with the service requirements of section 100 of the *Residential Tenancy Act* in giving the Eviction Notice to the Tenant. The evidence before us demonstrates that the Landlord emailed the Eviction Notice to the Tenant on March 21, 2024. The evidence further demonstrates that it was emailed to the same email address the Landlord and Tenant had previously used to communicate on matters respecting the tenancy. Therefore, despite the Tenant's evidence that she did not actually see the Eviction Notice until well after it was given, we are satisfied that it was properly given by the Landlord in accordance with the requirements of the *Act*.

### **Section 60 – Landlord's notice for non-payment of rent**

23. Section 60 of the *Residential Tenancy Act* permits a landlord to end a tenancy if rent is unpaid after the day it is due by giving notice in accordance with the *Act*.

24. The Commission is satisfied that the undisputed evidence of the parties establishes that on the date the Landlord delivered the Eviction notice, the Tenant had not paid rent for March 2024. The *Residential Tenancy Act* specifically gives tenants 10 days to pay overdue rent after receiving an Eviction Notice (section 60(4)(a)). In this case, the Commission is satisfied that the Landlord has established that March's rent was unpaid the date it was due, and not paid within 10 days of the Eviction Notice. Therefore, the Landlord's termination on this ground is allowed.

**Subsection 61(1)(b) – Landlord’s notice for repeatedly late rent payments**

- 25. Subsection 61(1)(b) permits a landlord to end a tenancy where the tenant is repeatedly late paying rent.
- 26. As we have found that the Landlord established valid grounds to end the tenancy for non-payment of rent, it is unnecessary for us to consider this ground.

**Condition of the property**

- 27. With respect to the condition of the property, the Landlord did not include this ground in the Eviction Notice. Therefore, we make no finding with respect to this ground for termination.

**Payment of Outstanding Rent**

- 28. Based on the evidence, which includes the parties’ testimony and Landlord’s documentary evidence, we are satisfied that the Tenant owes outstanding rent in the amount of \$6,978.00.
- 29. This amount of outstanding rent is made up of the following:

(a) Rent for Mar 20 – Apr 19 =	\$ 862.00
(b) Rent for Apr 20 – May 19 =	\$ 862.00
(c) Rent for May 20 – Jun 19 =	\$ 862.00
(d) Prior outstanding arrears =	<u>\$4,392.00<sup>1</sup></u>
(e) Total =	<b>\$6,978.00</b>

- 30. The Tenant must pay the Landlord the amount of outstanding rent by Friday, July 12, 2024.
- 31. The Tenant is also responsible to pay the Landlord outstanding rent on a pro-rated basis from June 20, 2024, to the date she and all occupants vacate the Rental Unit.

**F. CONCLUSION**

- 32. The appeal is dismissed. Order LD24-138 and Order LD24-139 are confirmed, subject to a variation in the termination date and amount of outstanding rent owed, respectively.

**IT IS ORDERED THAT**

- 1. The appeal is dismissed. Order LD24-138 and Order LD-139 are confirmed.**

---

<sup>1</sup> \$5,544 (outstanding arrears as of Nov 6, 2023) - \$1,152 (installment payment of \$288 towards arrears for Nov, Dec, Jan and Feb) = \$4,392.00.

2. The Tenancy agreement is terminated effective Friday, July 12, 2024, at 5:00 p.m. The Tenants and all occupants shall vacate the Rental Unit by that date and time.
3. The Tenant shall pay the Landlord outstanding rent in the amount of \$6,978.00 by Friday, July 12, 2024.
4. The Tenant shall also pay the Landlord outstanding rent on a pro-rated basis from June 20, 2024, to the date she and all occupants vacate the Rental Unit.
5. The amount the Tenant must pay the Landlord is subject to any adjustments for outstanding rent paid by the Tenant from the date of the hearing to the date of this Order.
6. The Tenants shall pay the outstanding amount to the Landlord by July 12, 2024.
7. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Residential Tenancy Act*.

**DATED** at Charlottetown, Prince Edward Island, 27<sup>th</sup> day of June, 2024.

**BY THE COMMISSION:**

(sgd. M. Douglas Clow)  
M. Douglas Clow, Acting 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.