



Date Issued: July 2, 2024
Dockets: LR24023
Type: Rental Appeal

INDEXED AS: Anne Quinn v. A & M Holdings Inc.
Order No: LR24-35

BETWEEN:

Anne Quinn (the "Tenant")

Appellant

AND:

A & M Holdings Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

Kerri Carpenter, Commissioner and
Panel Chair
M. Douglas Clow, Acting Chair

A. INTRODUCTION

1. This appeal relates to premises located at Apartment 5, 12 Oak Tree Crescent, Charlottetown, PEI (the “Rental Unit”). In this appeal which was heard by the Commission on May 14, 2024, the Tenant asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding:
 - A. that a tenancy shall end and all occupants shall vacate the Rental Unit; and
 - B. outstanding rent in the amount of \$4,626.00 is owed by the Tenant to the Landlord.

B. BACKGROUND

2. On February 21, 2024, the Landlord filed a *Landlord Application to Determine Dispute* (Form 2(B)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”), requesting an order requiring the Tenant and all occupants to vacate the Rental Unit, and requiring the Sheriff to put the Landlord into possession of the Rental Unit pursuant to clause 51(4)(b) of the *Residential Tenancy Act* (the “Act”). The Application also requests a monetary order for the Tenant to pay outstanding rent in the amount of \$3,215.84 pursuant to clause 19.(1) of the *Act*.
3. On March 7, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”).
4. In Order LD24-087, dated March 15, 2024, the Residential Tenancy Office found that the Tenant and all occupants vacate the rental unit on or before March 22, 2024, at 5:00 pm.
5. In Order LD24-088, dated March 15, 2024, the Residential Tenancy Office found that the Tenant must pay the Landlord rent in the amount of \$4,626.00 on or before April 30, 2024.
6. On March 26, 2024, the Tenant filed a Notice of Appeal with the Commission. The Tenant’s Notice of Appeal appealed both Order LD24-087 and LD24-088.
7. The Commission heard the appeal on May 14, 2024, by way of telephone conference call. The Tenant participated in the hearing. The Landlord’s representative Joey Gallant (“Mr. Gallant”) participated in the hearing.

C. DISPOSITION

8. The Tenant withdrew her appeal of Order LD24-087. With respect to Order LD24-088, the Commission allows the appeal and varies the amount of rent that the Tenant owes the Landlord.

D. SUMMARY OF TESTIMONY

9. At the outset of the hearing the Tenant withdrew her appeal of Order LD24-087 and therefore the finding noted in paragraph 1(A) above is no longer under appeal.

10. The Tenant offered evidence with respect to her appeal of Order LD24-088. She testified that her son moved into the rental unit in October 2023. Ms. Quinn contacted Mr. Gallant by text message on November 24, 2023, about having her son take over the rental unit. She found a new apartment for herself and was moved out of the rental unit on December 5, 2023. The Tenant then texted the Landlord on December 13, 2023, advising that her son and grandson have taken over the lease. She told her son to contact Mr. Gallant and she told Mr. Gallant to contact her son. The Landlord was paid \$1,100.00 of the \$1,400.00 owing for December and stated that she gave her son money from which he was to pay the balance of the December rent. Her position is that she does not owe rent for the Rental Unit after December as she moved out. She testified that in March 2024 she helped her son move out of the rental unit. Ms. Quinn has not received her security deposit back.
11. Mr. Gallant testified that he was never formally informed that the Tenant fully left the rental unit. He stated that the Tenant told him that she wanted her son put on the lease in January 2024. He stated that he had texted her son about the late rent but he was never informed that the Tenant was not there. He stated that the Tenant's son was to reach out to him but the Tenant's son never contacted him. Rent had not been paid for January and February along with the balance of rent for December which totals \$3,215.84. He stated that the Tenants had moved out the very last day of March. The Sheriff changed the locks on March 22, 2024, and the Landlord let them back after March 22, 2024, to retrieve the balance of their belongings.
12. During the hearing the parties emailed the Commission various text messages which the Commission collectively identified as Exhibit E-9. Following the hearing, the Commission combined these messages into one document, provided this document to the parties and invited their comments. No post hearing comments were received from the parties.
13. The parties both agreed that the tenancy was month to month.

E. ANALYSIS

14. The issue to be determined is whether the Tenant owes rent to the Landlord, and if so, how much. In making this determination, the Commission must first determine whether and when the Tenant terminated the tenancy between the Tenant and the Landlord.
15. Section 53. of the *Residential Tenancy Act* (the "Act") sets out the requirements for a notice of termination of a tenancy agreement:

53. Form and content of notice of termination

In order to be effective, a notice of termination shall be in writing and shall

(a) be signed and dated by the landlord or tenant giving the notice;

(b) give the address of the rental unit;

(c) state the effective date of the notice;

(d) except for a notice of termination under section 56, state the grounds for ending the tenancy;

(e) be given to the other party in accordance with section 100; and

(f) when given by a landlord, be in the approved form. 2022,c.88,s.53.

16. Section 100. of the Act sets out various requirements for service of documents. Clause 100.(1)(d) provides for service by sending a document electronically:

100. Service of documents

(1) A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:

...

(d) sending the document electronically where

(i) it is provided in the same or substantially the same form as the printed document,

(ii) the other party has provided an electronic address for receipt of documents, and

(iii) it is sent to that electronic address;

17. Subsection 55.(2) sets out the amount of notice a tenant must give a landlord for a month-to-month tenancy:

Notice for monthly or other periodic tenancy

55. (2) A tenant may end a month-to-month or other periodic tenancy by giving the landlord a notice of termination effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice; and

(b) is the day before the day that rent is payable under the tenancy agreement.

18. If the Tenant wished to end the Tenancy in a manner consistent with those provisions she must do so in accordance with the above provisions. In this case the Tenant testified that she moved out in December and therefore the earliest the Tenancy could have been terminated is December 31, 2023.

19. The Commission has reviewed Exhibit E-9 which includes text messages on November 24, 2023 and December 13, 2023 from the Tenant to the Landlord and which state as follows:

Friday, Nov 24 – 8:02 p.m.

Hi, My son wants to take over the apartment here so he can keep his son in the school he likes. This of course has to be ok with you. I have looked at another place this evening and just need a reference from you. I know

I have been late a few times but the rent has always been paid. I would really appreciate a good word from you. I really would like for my grandson to be able to stay in the school where all his friends are and Thomas works full time and has no problem making the rent. The landlord from the other place will be calling you this evening to get a reference from you for me. Please let me know what you *[sic]* decision is. Thanks. Anne.

Wednesday, Dec 13 – 5:51p.m.

Hi. My son and grandson have taken over the lease on my apartment so he can keep his *[sic]* in the school he likes. I texted and emailed you a couple of weeks ago about this. Also it's been almost 3 weeks since the heat pump has worked.

20. The Commission finds that the November 24 text message was insufficient to provide the detail required by the Act, but that sufficient detail was provided in the December 13 text message. The Landlord stated that he did not receive the December 13 text message, however, the Commission finds the Tenant's evidence including the screen shot of the text message to be credible and therefore conclude that the text message was given to the Landlord.
21. The operation of section 53 of the Act with clause 100.(1)(d) permits a tenants notice of termination to be sent electronically. Clause 100.(1)(d) makes no reference or distinction between types of electronic document service. The Commission therefore finds that communications by text message is permissible for the purposes of a tenant providing a notice of termination to a landlord. While there is no handwritten signature on a text message, the identity of the Tenant is clear. From E-9 the Commission ascertains that Mr. Gallant's text message records clearly identify the Tenant as "Q 12-5 Anne Quinn". As the address of the rental unit is Apartment 5, 12 Oak Tree Crescent, the Commission finds that such an identifier represents the equivalent of a signature, so far as such identifier is possible with a text message. This also provides the address of the rental unit. While the November 24, 2023 text message is, by itself, conditional and thus not definite, the December 13, 2023 text message contains the missing certainty. In addition, the Commission notes the Tenant's testimony that she was fully moved out of the rental unit by the end of December 2023. The fact that there is undisputed evidence that the Tenant's son, a grown adult, remained in the premises after the Tenant ended the Tenancy is not something for which the Tenant can be held responsible.
22. Accordingly, the Commission finds that in December 2023 the Tenant provided the Landlord with the required notice of termination and, given the requirements of subsection 55.(2), the tenancy agreement ended on January 31, 2024.
23. The evidence before the Commission is that only \$1100.00 rent was paid in December 2023, by way of a payment of \$350.00 on December 30, 2023 and a payment of \$750.00 on December 31, 2023. Given that rent was \$1,400 per month in 2023, and increased by 3% to \$1442 per month commencing in January, 2024, that leaves rental arrears of \$300.00 for the month of December 2023. In addition, no rent was paid for January 2024. Accordingly, the Commission finds that the total arrears of rent are \$1,742.00.

24. The Landlord may seek recourse against the individual who resided in the Rental Unit after the tenancy was terminated by the Tenant.
25. The Tenant may apply to the rental Office to seek a determination with respect to a possible return of her security deposit.

F. CONCLUSION

26. The Tenant has withdrawn her appeal of Order LD24-087. The Tenant's appeal of Order LD24-088 is allowed and the arrears of rent are varied to \$1,742.00.

IT IS ORDERED THAT

1. **The appeal of Order LD24-087 has been withdrawn by the Tenant.**
2. **The appeal of Order LD24-088 is allowed.**
3. **The Tenant must pay the Landlord the sum of \$1,742.00 within seven (7) days of the date of this Order.**

DATED at Charlottetown, Prince Edward Island, this 2nd day of July, 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.