



Date Issued: July 3, 2024
Dockets: LR24035
Type: Rental Appeal

INDEXED AS: Thanh Sinh Tran v. Kevin and Sandra Cotton
Order No: LR24-36

BETWEEN:

Thanh Sinh Tran (the "Landlord")

Appellant

AND:

Kevin Cotton and Sandra Cotton (the "Tenants")

Respondents

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 June 11, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that a tenancy agreement shall continue in full force and effect.

B. BACKGROUND

2. On April 18, 2024, the Tenants filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application was filed pursuant to the *Residential Tenancy Act* (the “Act”) to dispute an *Eviction Notice* (Form 4(A)) dated April 8, 2024, effective April 30, 2024, (the “Notice”). No reason was selected on the Notice however the particulars stated:

The lease term ending on 30th Apr 2024.

3. On May 2, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Landlord and one Tenant participated in the hearing.
4. The Residential Tenancy Officer issued Order LD24-152 on May 10, 2024, which ordered that the tenancy agreement between the parties shall continue in full force and effect.
5. The Landlord appealed Order LD 24-152 on May 13, 2024.
6. The property at issue is a single family home located at 304 Granville Street in Summerside PE (the “Rental Unit”). Monthly rent is \$1,750.00. A security deposit of \$1,750.00 was paid.
7. The legislation applicable to this appeal is the *Residential Tenancy Act*, RSPEI 1988, cap. R-13.11 (the “Act”).
8. The Commission heard the appeal on June 11, 2024, by way of telephone conference call. The Landlord, Thanh Sinh Tran (“Mr. Tran”), and the Tenant, Sandra Cotton (“Ms. Cotton”) participated in the tele-hearing.

C. DISPOSITION

9. The appeal is dismissed and Order LD24-152 is confirmed.

D. SUMMARY OF EVIDENCE

10. Mr. Tran testified that he had a fixed term lease with the Tenants, and the term ended April 30, 2024. He testified that he gave the tenants notice two months before the end of the term that he would not renew the lease. He stated that the rental income is not enough to pay the mortgage and it is unfair for the Landlord to be required to keep renting the Rental Unit.

11. Ms. Cotton testified that the Tenants are having difficulty finding another home to rent. She testified that Mr. Tran wants to renovate the Rental Unit and then sell it. She suggested that he should follow the eviction process set out under the *Act* as it applies to renovations and sale of a rental unit.

E. ANALYSIS

12. The issue to be determined is whether the Tenants must vacate the unit due to the Notice of Eviction served by the Landlord on the Tenants. In making this determination the Commission has regard to the tenancy agreement between the parties, the evidence submitted to the Commission, and the relevant provisions of the *Act*.

13. Exhibit E-10 is an agreement (the "Tenancy Agreement") between the parties dated April 24, 2023. On page 1 of the Tenancy Agreement the following provision is set out:

LEASE TERM: This Agreement shall begin on the _1st_ day of _May_, 2023_ and end on _30th_ day of _Apr_, 2024 hereinafter known as the "Lease Term".

14. The Tenancy Agreement does not include an option to renew.
15. Subsections 52(1) and (2) of the *Act* provide for a deemed renewal of a tenancy agreement, subject to certain exceptions. They state as follows:

52.(1) Deemed renewal where no notice

Where a tenancy agreement ends on a specific date and does not include an option to renew, and the landlord has not terminated the agreement in accordance with Division 3 of this Part, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with this Act.

52.(2) Exceptions

Subsection (1) does not apply

- (a) where the landlord and tenant have entered into a written agreement in accordance with subsection 51(3);*
- (b) where the tenancy has been terminated in accordance with this Act;*
- (c) to a rental unit provided by an employer to an employee as a benefit of employment;*
- (d) temporary accommodation under the Tourism Industry Act that is provided for a guest for a continuous period of two months or more; or*
- (e) to premises ordinarily occupied by the owner of the premises and vacated by the owner for a period not exceeding seven months during a calendar year.*

16. In the present appeal, there is no evidence of the existence of a subsection 51(3) agreement; that is to say, a written agreement between the parties, other than a tenancy agreement, to end the tenancy. Likewise, there is no evidence that any of the other exceptions set out in subsection 52(2) apply.

17. Subsection 52(1) makes reference to “Division 3 of this Part”. Upon a review of the *Act*, the Commission observes that Division 3 – Landlord’s Notice – of Part 4 – Ending a Tenancy, contains sections 60 through 67 inclusive. The Commission has reviewed those sections and finds that there is no evidence that the Landlord has terminated the Tenancy Agreement in accordance with any of the sections contained in Division 3.
18. In summary, there is no new evidence to vary the findings set out in Order LD24-152. The previously referenced sections of the *Act* were approved by the Legislative Assembly of Prince Edward Island and neither the Rental Office nor the Commission has any discretion to vary the application of these sections. The Commission finds that the Tenancy Agreement is deemed under the *Act* to renew, even though it has a specific end date and does not have an option to renew, as in this instance the Landlord has not terminated the Tenancy Agreement pursuant to Division 3 and none of the subsection 52(2) exemptions apply.

F. CONCLUSION

19. The appeal is dismissed. Order LD24-152 is confirmed and the Tenancy Agreement shall continue.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-152 is confirmed.**
3. **The Tenancy Agreement between the parties shall continue in full force and effect.**

DATED at Charlottetown, Prince Edward Island, this 3rd day of July, 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.