



Date Issued: July 16, 2024
Dockets: LR 24041
Type: Rental Appeal

INDEXED AS: Jenny Basque v. Rush Property Holdings Inc.
Order No: LR24-42

BETWEEN:

Jenny Basque (the "Tenant")

Appellant

AND:

Rush Property Holdings Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
Cynthia McCardle, 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 July 2, 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 be terminated.

B. BACKGROUND

2. On May 21, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an *Eviction Notice* (Form 4(A)) dated and served on May 11, 2024 (the “Notice”).
3. The Notice was served to the Tenant for repeatedly late rent payments. The particulars of termination state:

“[Tenant] has not paid rent on time dating back to over a year and a half ago.”

4. The Application states in part:

“I have a text from you saying that I have 10 days to pay my rent and that if it happens one more time, then you will evict. I paid my rent, then afterwards you say you arent honoring what you said and are evicting me...”

5. On June 11, 2024 a teleconference hearing was held with the parties before the Residential Tenancy Officer (the “Officer”) for determination of the Application. The Tenant and a representative of the Landlord (the “Representative”) participated in the hearing.
6. The Officer issued Order LD24-191, on June 12, 2024, which terminated the tenancy effective June 30, 2024, at 5:00 p.m.
7. The Tenant appealed Order LD24-191 on June 17, 2024.
8. The Commission heard the appeal on July 2, 2024, by way of telephone conference. The Tenant, Jenny Basque, participated. The Landlord was represented by Steven Rush.

C. DISPOSITION

9. The appeal is dismissed and Order LD24-191 is confirmed, subject to a variation in the termination date of the tenancy to July 31, 2024 at 5:00 p.m.

D. SUMMARY OF EVIDENCE

10. The Tenant testified as to the circumstances why she has been frequently late in paying rent over the last two years. She stated that her situation is now more secure and noted that she had paid her rent for July 2024 on June 27, 2024. She stated that her June 2024 rent was two days late for reasons beyond her control, which she testified to.

11. Mr. Rush testified that he is the owner of the Landlord company. He stated that he was too lenient in the past. He stated he issued Form 4(A)s on January 22, 2024, March 2, 2024 and May 2, 2024. Each time the rent would be paid in full within 10 days of the service of the Form 4(A)s. On May 11, 2024, he issued another Form 4(A) seeking eviction on the basis that the Tenant was repeatedly late in paying rent. Mr. Rush expressed concern that if the Tenant was successful on appeal she would fall back into a pattern of late payment of rent.

E. ANALYSIS

12. The Commission has reviewed Exhibit E-14, which is a list of e-transfers from the Tenant to the Landlord. Exhibit E-14 shows a history of late and partial rent payments from August 2022 to May 2024.

13. The Commission has also reviewed the several Form 4(A) Eviction Notices on file. Attached to the January 22, 2024 Form 4(A) Eviction Notice, which was the first eviction notice issued, was an email stating the following:

I have attached a copy of an eviction notice for failure to pay rent. I am sorry to have to do this but unfortunately I have bills that I can't just continue to pay late as I'm constantly being hit with late fee charges. The notice does give you 10 days to pay the rent in full and it will no longer be valid and if you are unable to then you have until Feb 10th to vacate the property. I hate to have to do this but I think I have been more than fair on allowing rent late and not being paid in full.

14. Clause 61(1)(b) of the Residential Tenancy Act, RSPEI 1988, R-13.11 (the "Act") reads:

61. Landlord's notice for cause

(1) A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

...

(b) the tenant is repeatedly late in paying rent;

15. The Commission finds that there is a history of late payment of rent which appears to have been tolerated from August 2022 to January 2024. On January 22, 2024, Mr. Rush made it clear to the Tenant that he would no longer tolerate late payment of rent by serving an eviction notice and explaining his position in his accompanying email. Since that date, Mr. Rush issued two further Form 4(A)s for late rent and then served a Form 4(A) for repeatedly late rent.

16. The Act is clear that a landlord may evict a tenant for repeatedly late payment of rent. The Commission finds that there is objective evidence of a pattern of repeated lateness in the payment of rent by the Tenant to the Landlord. As made clear in Mr. Rush's January 22, 2024 email to the Tenant, landlords have bills to pay and late payment of rent results in late fee charges which financially burden a landlord.

17. The Commission therefore dismisses the appeal and confirms Order LD24-191 terminating the tenancy, subject to a variation in the termination date. As the Tenant did

pay her rent for the month of July 2024 prior to the appeal hearing, the Commission varies the termination of the tenancy to July 31, 2024 at 5:00 p.m.

F. CONCLUSION

18. The appeal is dismissed and Order LD24-191 is confirmed, subject to a variation in the tenancy termination date.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-191 is confirmed, subject to a variation in the tenancy termination date.**
3. **The tenancy between the parties shall terminate effective 5:00 p.m. on July 31, 2024. The Tenant and all occupants must vacate Apartment 4, 92 Weymouth Street, Charlottetown PE by this date and time.**

DATED at Charlottetown, Prince Edward Island, 16th day of July, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. Cynthia McCardle)

Cynthia McCardle, 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.