



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 24, 2024

Dockets: LR24028

Type: Rental Appeal

INDEXED AS: Elizabeth Sheridan v. Coltan Tew Brooks

Order No: LR24-43

BETWEEN:

Elizabeth (Shawna) Sheridan (the "Landlord")

Appellant

AND:

Coltan Tew Brooks (the "Tenant")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
M. Douglas Clow, Acting Chair

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 12, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord is required to return a portion of the security deposit to the Tenant, and that the Tenant is not responsible to pay rent after February 16, 2024.

B. BACKGROUND

2. This appeal concerns a rental unit located at 402 Queen Street, Charlottetown (the “Rental Unit”). The Rental Unit is a two-bedroom, one-bathroom, single family dwelling that the Landlord has owned for approximately eight years.
3. In February 2023, the Landlord and the Tenant entered into a written, fixed term tenancy agreement for the Rental Unit for the period of September 1, 2023, to June 30, 2024. The Tenant moved into the Rental Unit on August 30, 2023. Rent was \$3,000.00 per month, due on the first day of the month. The Tenant paid a security deposit of \$3,000.00 on or about August 31, 2023. The Rental Unit was furnished, with the tenancy agreement indicating that it included (in addition to other services and facilities):
 - Pillows, bedding, towels, blankets, dishes, cutlery, pots and pans, drapes and lamps, sofa, table and chairs, breakfast bar stools, beds and other furniture etc.
4. In January 2024, the Landlord and Tenant were parties to an earlier proceeding before the Rental Office.¹
5. The Tenant vacated the Rental Unit on January 31, 2024.
6. On February 13, 2024 the Landlord filed a *Landlord Application to Determine Dispute (Form 2(B))* (the “Application”) with the Rental Office seeking to retain the Tenant’s entire security deposit. The “Conclusion” part of the Application states as follows:
 1. *The Lessee owes the Lessor for electricity to fuel the Lessee Tesla Electric Vehicle. Amount of \$854.70 on top of the security deposit.*
 2. *August 30 and August 31 rent totally \$197.26.*
 3. *The full security deposit amount should be forfeited since the Lessee continued to cause damage until he left the premises at [address]. This was brought up on January 16, 2024 in front of the Residential Officer Mr. Burke.*
 4. *Plus the request of the tenant paying out his lease in the Lessor December 4, 2023 docket numbers [three previous dockets listed].*
7. On March 19, 2024 the Landlord and a representative of the Tenant participated in a teleconference hearing before the Residential Tenancy Officer.

¹ Exhibit E-32, pgs. 328-335.

8. Order LD24-117 was issued on April 8, 2024. The Order:
- i. allowed a claim of \$153.92 against the security deposit regarding the Tenant's electric vehicle electricity usage at the Rental Unit;
 - ii. denied the Landlord's rent claim for August 30 and 31, 2023;
 - iii. denied the Landlord's claims for damage to the Rental Unit, including the back door;
 - iv. allowed the Landlord's rent owing claim for the period of February 1 to 16, 2024, in the amount of \$1,655.17; and
 - v. found that the tenancy was terminated February 16, 2024, and that the Tenant was not responsible for any rent for the Rental Unit thereafter.
9. The Landlord appealed Order LD24-117 on April 26, 2024.
10. The Commission heard the appeal on June 12, 2024, by way of telephone conference. The Landlord attended on her own behalf and Tracy Dibsall attended on behalf of the Tenant (the "Tenant's Representative"). In addition, both the Landlord and the Tenant's Representative provided submissions in writing following the hearing.

C. DISPOSITION

11. The appeal is dismissed.

D. SUMMARY OF EVIDENCE

Landlord's Evidence

12. The Landlord's evidence included hundreds of pages of documentary evidence and included (but was not limited to) photographs of the Rental Unit, screenshots of text messages between her and the Tenant, a quote to replace the back door, copies of Maritime Electric bills, and written submissions by the Landlord.
13. In summary, the Landlord's documentary evidence and her testimony at the hearing reveal her issues to be:
- i. The Tenant used electricity from the Rental Unit to charge his electric vehicle, which was not permitted by the tenancy agreement, nor approved by the Landlord;
 - ii. The Tenant damaged the back door to the Rental Unit by "using excessive force";
 - iii. The Tenant vacated the Rental Unit without notice to the Landlord, and did not continue to pay rent for the remainder of the fixed term tenancy;
 - iv. The Tenant moved into the Rental Unit two days early and did not pay rent for those two days; and

- v. The Tenant damaged various other things in the Rental Unit, including: door frames, trim, baseboards, attic hatch, bathroom tile, heating sources, bed frame, kitchen breakfast bar, appliances, kitchen utensils, furniture, hardwood flooring, etc.
14. The Landlord testified at the hearing that she did not complete a move-in inspection report when the Tenant moved in because, in her opinion, photographs of the condition of the Rental Unit at the time of move-in should have been more than enough.
 15. The Landlord's post-hearing submissions state that the Tenant damaged the Rental Unit because "he was angry that he could not get out of the lease [as] requested". This is consistent with the Landlord's submissions at the hearing.

Tenant's Evidence

16. The Tenant also submitted almost two-hundred pages of documentary evidence, including more than one-hundred photographs of the condition of the Rental Unit purportedly taken throughout the tenancy. The Tenant also submitted screenshots of his electric vehicle charging statistics for September 2023 through January 2024.
17. The Tenant did not appear at the hearing. His mother, the Tenant's Representative, appeared on his behalf.
18. The Tenant submitted, in writing, that the Landlord had no issues with him moving in early on August 30, 2023, and that she had never requested any payment for those two days prior to the hearing before the Rental Office in March 2019. The Tenant's Representative spoke to this point at the hearing, saying the request for rent for August 30 and 31 was not brought up until months later at the hearing.
19. The Tenant's Representative submitted that no inspection report was signed when the Tenant moved in, nor was there an inventory list. She said that the pictures of the Rental Unit submitted into evidence by the Tenant were to give perspective that the Rental Unit was not in "perfect condition", and to support his claim that because the rest of the Rental Unit was not perfect, it is reasonable to conclude that the construction of the back door was not perfect either.
20. The Tenant's Representative also spoke to the change in relationship between the Tenant and Landlord after the Tenant asked to convert the tenancy agreement from a fixed-term to month-to-month. She said that complaints were made to officials about the welfare of the Tenant's pets, the Landlord took pictures of the Rental Unit and the Tenant's personal belongings, some furniture items were removed from the Rental Unit (kitchen chairs and barstools) and the police were called.
21. The Tenant's documentary evidence also included a letter from a third party who regularly visited the Rental Unit in support of the Tenant. The author of the letter did not appear before the Commission to give direct testimony; however, her letter provided similar commentary in respect of the Landlord making complaints about the welfare of the Tenant's pets, calling the police, and removing furniture. The letter also submits that there was no excessive damage to the Rental Unit as claimed by the Landlord

22. In conclusion, the Tenant's Representative submitted that without the proper inspection in place at the beginning of the tenancy, the Landlord has made a lot of assumptions about damage to the Rental Unit.

E. ANALYSIS

23. The Landlord's Notice of Appeal requests as relief:

- i. to retain the entire \$3,000.00 security deposit;
- ii. rent owing to the end of the fixed-term lease in the amount of \$15,000.00; and
- iii. additional compensation in the amount of \$3,000.00.

24. In Order LD24-117, the Residential Tenancy Officer allowed the Landlord's claim to a portion of the security deposit. Specifically, Order LD24-117 partially allowed the Landlord's claim for electricity usage for the Tenant's electric vehicle in the amount of \$153.92, and partially allowed the Landlord's claim for rent owing in the amount of \$1,655.17. However, the Residential Tenancy Officer denied the Landlord's claim for damage to the Rental Unit and found that the Tenant was not responsible for any rent owing beyond February 16, 2024.

25. An appeal to the Commission, per subsection 89(8) of the *Residential Tenancy Act*, is heard by way of a re-hearing. When exercising this authority, the Commission, as appellate body, may agree with all, some, or none of the findings made by the original administrative decision-maker (in this case, the Residential Tenancy Officer). The statutory requirement for a rehearing insists only that the Commission make its own decision based on the entire record.²

26. For the reasons that follow, the Commission finds no reason to disagree with any of the findings made by the Residential Tenancy Officer.

Electricity Usage

27. In Order LD24-117, the Residential Tenancy Officer partially allowed the Landlord's claim for electricity usage for the Tenant's electric vehicle in the amount of \$153.92.

28. The Residential Tenancy Officer found that although electricity was an included service in the tenancy agreement, in this case, the parties had not turned their minds to the cost of the electrical vehicle charging, and that it would be paid by the Landlord. He concluded that, in any event, the Tenant acknowledged a deduction was appropriate for the actual cost of the electrical vehicle's electricity usage.

29. In her Application, the Landlord claimed \$854.70 "on top" of the security deposit for the electricity used to charge the Tenant's electric vehicle. To support her claim, the Landlord submitted statements from Maritime Electric showing the electricity usage from August 2, 2023, to February 1, 2024.³ Based in part on these statements, the Landlord claimed the amount owing was \$854.70.

² *Perry v. Kings Square Affordable Housing*, 2023 PESC 32, at para 22.

³ Exhibits E-34 and E-35, pgs. 337-346.

30. In contrast, the Tenant submitted specific data showing the monthly kilowatt-hours of charging for his electric vehicle.⁴ From this specific information, the Tenant was able to more accurately calculate how much electricity was used at the Rental Unit to charge his car during the tenancy.
31. On this point, similar to the finding of the Residential Tenancy Officer in Order LD24-117, the Commission prefers the evidence of the Tenant as to actual electricity usage. This evidence is more reliable because it is based on the actual electricity consumption of the vehicle supported by reports generated by the vehicle, rather than a vague estimation.
32. Based on the above, the Commission agrees with the finding of the Residential Tenancy Officer in Order LD24-117, and allows a claim against the security deposit for this cost in the amount of \$153.92.⁵

Damage to the Rental Unit

33. The *Residential Tenancy Act* provides that a tenant is responsible for “undue damage” to a rental unit that is caused by the actions or neglect of the tenant (s. 28(4)). Tenants are not responsible for reasonable wear and tear (s. 28(5)).
34. Where a landlord makes application to the Director to claim against the security deposit, the onus is on the landlord to establish that there was undue damage, beyond ordinary wear and tear, caused by the tenant(s) during the tenancy. Therefore, in this case, the burden of proof lies with the Landlord.
35. In Order LD24-117, the Residential Tenancy Officer found that the Tenant was not responsible for alleged undue damage to the Rental Unit. The Commission agrees.
36. As a starting point, the Landlord did not complete “a written condition inspection report in the approved form”, in the presence of the Tenant, at the start of the tenancy as required by section 18 the *Residential Tenancy Act*. The evidence seems to demonstrate that the Landlord was aware of this requirement. In a text message to the Tenant in July 2023, she states “...we need to go over the house and everything in person. New rules that need to be followed by the [Act]”.⁶ However, the Landlord’s position at the hearing was that she took pictures of the Rental Unit, and that should be “more than enough”. Unfortunately for the Landlord, as she had stated to the Tenant via text message, the *Residential Tenancy Act* makes a condition inspection report an obligation of a landlord at the start of a tenancy. The absence of this report weighs against the Landlord’s evidence as to the condition of the Rental Unit before the Tenant moved in.

⁴ Exhibit E-41, pgs. 520-534.

⁵ Order LD24-117 at para 48-49:

[48] ... The Officer accepts the electricity usage charge of \$146.59, subject to two adjustments.

[49] Harmonized Sales Tax of 15.0% applies to the electricity usage (\$21.99), which is partially offset in the Maritime Electric statements by the PEI Government Energy Rebate of 10.0% for the first energy charge block (\$14.66). The net additional electricity cost is \$7.33, for a total electricity cost of \$153.92.

⁶ Exhibit E-42, pg. 535.

37. We have reviewed the photographs the Landlord submitted into evidence that appear to be dated August 30, 2023, and they certainly seem to depict a tidy, furnished home;⁷ however, they do not show the condition of the Rental Unit in any detail sufficient to conclude the Tenant damaged door frames, trim, baseboards, the attic hatch, bathroom tile, heating element, bed frame, kitchen breakfast bar, appliances, kitchen utensils, furniture, hardwood flooring, etc., during the tenancy as alleged by the Landlord.
38. In our opinion, the Landlord's evidence amounts to not much more than assertions and speculation as to the cause of alleged damage in the Rental Unit. For example, she alleges that the Tenant damaged the wall heater in the living room because "he did not get his way" with respect to his requested sublet. The Landlord has provided no proof beyond this assertion as to how the heater was damaged. The Landlord further alleges that the Tenant "took out his anger" on other items in the Rental Unit such as kitchen appliances and utensils, trim, baseboards, etc. She submits this is the reason the Tenant lost his security deposit.
39. In response, the photographic evidence submitted by the Tenant depicts a Rental Unit rife with imperfections: cracked bathroom floor tile, loose door hinges, cracked door frames, gaps in baseboards and trim, etc.⁸ The Tenant's position is that the overall condition of the Rental Unit was never perfect.
40. On the whole, the Commission is not convinced by argument of the Landlord. Instead, it seems to us that many of the issues the Landlord has alleged were "damage" by the Tenant are more likely a result of the age of the home or poor-quality construction within the Rental Unit. There is no evidence sufficient to satisfy us that the Tenant is responsible for undue damage to the Rental Unit beyond reasonable wear and tear.
41. With respect to the specific damage to the back door, the Commission is similarly not satisfied that the Tenant is responsible.
42. On October 10, 2023, the Tenant texted the Landlord about issues he had accessing the Rental Unit through the back door and telling her about the damage. The Tenant's text messages explain his assumption that the damage to the door was as a result of poor installation.⁹ As found by the Residential Tenancy Officer in LD24-117, the Tenant's further evidence of photographs of the back door raise issues of pre-existing vulnerability and damage to the door frame. As the Residential Tenancy Officer said, this puts into question whether it was only a matter of time before the door frame broke.
43. On the other hand, the Landlord's evidence amounts to a submission that the door broke while the Tenant was renting the Rental Unit, therefore the Tenant must have broken the door by using "excessive force". In the Commission's assessment, this position is unsupported by reliable evidence. Further, the Commission agrees with the finding of the Residential Tenancy Officer that the photographs and other evidence provided by the parties does not establish "catastrophic damage" to the door or door frame that is incapable of being repaired.¹⁰

⁷ Exhibit E-1, pgs. 4-28.

⁸ Exhibit E-40, pgs. 366-483.

⁹ Exhibit E-1, pgs. 38-39.

¹⁰ See, for example, Exhibit E-1, pgs. 42-48; Exhibit E-40, pgs. 419-421.

44. On this point, we pause to note that the Landlord did submit an email from an employee of Alweather Windows and Doors stating he visited the Rental Unit and “*it was clear the door had been forced (likely kicked) open*” and that “*all our company can do is replace the complete door and frame*”.¹¹ However, that particular individual did not appear before the Commission to give direct testimony about his assessment and conclusions. Further, there is no evidence that the Landlord sought a quote or opinion from any other person qualified to repair the door frame, without replacing the entire door.
45. In any event, as concluded above, we are not satisfied that the Landlord has provided any evidence to support her claim that the Tenant is responsible for undue damage to the back door caused by his actions or neglect in accordance with subsection 28(4) of the *Residential Tenancy Act*.
46. For these reasons, the Commission denies the Landlord’s appeal claiming damages to the Rental Unit, including damage to the back door.

Rent Owing

47. The Landlord has claimed rent owing for August 30 and 31, 2023, and from February 2024 to the end of the fixed-term tenancy agreement, being June 30, 2024.
48. With respect to the claim for August 30 and 31, 2023, the Residential Tenancy Officer in Order LD24-117 denied this claim. The Commission finds no reason to disturb the finding of the Officer that the evidence presented does not establish that rent was owed for these two days. The correspondence between the parties leading up to the Tenant moving in does not discuss pro-rated rent for those two days. Instead, when the Tenant asked if she would be okay with him arriving a few days early and storing some things in the Rental Unit, the Landlord responded: “*I have booked the house off from August 29 ... I knew that you would be coming potentially a few days early... just keep me posted.*”¹²
49. The Commission agrees with the Residential Tenancy Officer that the evidence demonstrates the Landlord did not intend to charge pro-rated rent for August 2023, and the request was not made until the hearing in March 2024. Therefore, the Commission denies this claim on appeal.
50. With respect to the claim for rent owing from February 1, 2024, to the end of the fixed-term tenancy, the Residential Tenancy Officer partially allowed this claim in the amount of \$1,655.17, to February 16, 2024. In Order LD24-117, the Officer found that the Tenant had abandoned the Rental Unit within the meaning of subsection 42(2) of the *Residential Tenancy Act*; however, he also found that the Landlord was expected to make extensive efforts to re-rent the Rental Unit in the circumstances, and failed to do so. Therefore, the Officer denied the Landlord’s claim for rent owing to the end of the tenancy agreement, and found that the Landlord could reasonably have re-rented the Rental Unit within two weeks of discovering it vacant. The Landlord was awarded partial rent to February 16, 2024.
51. The Commission finds no reason to disturb the finding of the Residential Tenancy Officer.

¹¹ Exhibit E-1, pg. 55.

¹² Exhibit E-42, pg. 535.

52. First, the evidence suggests that the Landlord tried to hinder the Tenant's efforts to sublet the Rental Unit. The evidence demonstrates that the Tenant first approached the Landlord about the possibility of changing the fixed-term tenancy to month-to-month in October 2023 after he found out part of his schooling would take place out of province. The Landlord did not agree to this. The Tenant eventually asked if he would be permitted to find someone to sublet the Rental Unit. On this point, we note that the terms of the tenancy agreement restricted the Tenant's ability to look for a sublet because it prohibited advertising the Rental Unit on any website.¹³ Nevertheless, on December 3, 2023, after some discussion between the parties over text message, the Landlord agreed the Tenant could look for a sublet. However, she then requested that the Tenant remove pictures of the outside of the house from his rental listing.¹⁴ Two days later, on December 5, 2023, the Landlord filed an application with the Rental Office, seeking, in part, "compensation for the stress caused by the Tenant's harassment regarding the sublet issue".¹⁵
53. With this in mind, the Commission agrees with the finding of the Residential Tenancy Officer that the Landlord's conduct could reasonably be said to have a chilling effect on further attempts by the Tenant to sublet for the remainder of the fixed-term tenancy.
54. Further, section 46 of the *Residential Tenancy Act* requires a landlord to mitigate their losses where a tenant abandons the rental unit. In this case, the Commission agrees with the Residential Tenancy Officer that the Landlord has not made reasonable attempts to mitigate her losses. The Commission agrees that the evidence provided does not support the Landlord's claim that the Rental Unit has not been advertised for rent because of the extensive repairs required due to the Tenant's alleged damage. Therefore, consistent with the findings in Order LD24-117, this is not a valid reason preventing the Landlord's rental of the Rental Unit.
55. In conclusion, the Commission denies the Landlord's appeal for rent owing to the end of the fixed-term tenancy. However, we find no reason to disturb the Residential Tenancy Officer's findings that the Tenant owes rent up to and including February 16, 2024, in the amount of: \$1,655.17.¹⁶

Additional Compensation

56. Finally, the Landlord's Notice of Appeal states:

"That Landlord is seeking compensation for work that is not part of the landlord's lease agreement and cost and time dealing with the rental board of the Lessee's behaviour in the amount of \$3,000.00."

57. For the reasons that follow, the Commission denies this claim.

58. First, the Landlord appears to have added this claim to her Notice of Appeal without it first being adjudicated by the Rental Office as the decision-maker of first instance. Therefore, it is not a proper ground of appeal.

¹³ Exhibit E-39, pg. 365.

¹⁴ Exhibit E-1, pgs. 112; 114.

¹⁵ Exhibit E-32, pgs. 328-335.

¹⁶ \$3,000/29 days in February x 16 days = \$1,655.17.

59. Next, in any event, the Landlord has not provided any detail or evidence sufficient to permit the Commission to substantiate her claim for \$3,000.00 for costs and compensation.
60. Finally, while the Commission is authorized to award costs to a successful party per clause 85(1)(q) of the *Residential Tenancy Act*, the Landlord has not been successful on this appeal. Further, that authority is discretionary and exercised in exceptional circumstances.

F. CONCLUSION

61. The appeal is dismissed. The terms of Order LD24-117 are confirmed, subject to a variation in the amount of interest owing on the security deposit held by the Landlord.
62. Accordingly, the Landlord shall pay to the Tenant the amount of \$1,253.97, calculated as follows:

| | |
|--|-------------------|
| Landlord compensation for electricity usage | \$153.92 |
| Landlord compensation for rent owing | \$1,655.17 |
| <i>Subtotal</i> | <i>\$1,809.09</i> |
| Less Security Deposit | (\$3,000.00) |
| Less Accrued Interest on Security Deposit (calculated from Sept 1, 2023, to date of this Order) | (\$63.06) |
| Total Owing to the Tenant | \$1,253.97 |

IT IS ORDERED THAT

1. The appeal is dismissed.
2. The terms of Order LD24-117 are confirmed, subject to a variation in the amount of interest owing on the security deposit held by the Landlord.
3. The Landlord shall pay to the Tenant the amount of \$1,253.97 on or before August 8, 2024.
4. 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, 24th day of July, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner

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

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.