



Date Issued: July 24, 2024
Dockets: LR 24034
Type: Rental Appeal

INDEXED AS: Madelaine Venart v Mikalia MacLaurin and Jeremy MacDonald
Order No: LR24-44

BETWEEN:

Madelaine Venart (the “Landlord”)

Appellant

AND:

Mikalia MacLaurin and Jeremy MacDonald (the “Tenants”)

Respondents

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 19, 2024, and June 27, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord must pay double the security deposit and that the Tenants are not responsible for any further rent payments.

B. BACKGROUND

2. On March 18, 2024 the Tenants filed a *Tenant Application to Determine Dispute (Form 2(A))* (the “Tenants’ Application”) with the Residential Tenancy Office (the “Rental Office”) seeking a monetary order for double the security deposit.
3. At 9:00 a.m. on April 16, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Residential Tenancy Officer (the “Officer”). The Tenants advised the Officer that they had received the first page of the Landlord’s Application (unfiled) in the Evidence Package but not the second page. During the hearing the Rental Office emailed the parties both pages of the filed Landlord’s Application.
4. At the hearing the Officer advised the parties that the Tenants’ Application and the Landlord’s Application address related matters that should be heard together. The parties agreed to a revised evidence submission deadline of 4:00 p.m. on April 19, 2024 and an adjourned hearing date of 9:00 a.m. on April 24, 2024. The Rental Office emailed the parties a rescheduled notice of hearing.
5. On April 24, 2024 the Tenants and the Landlord participated in a teleconference hearing before the Officer. The Officer issued Order LD24-146, on May 2, 2024, which ordered that the Landlord must pay the tenants \$2,244.52 by May 22, 2024, and that the Tenants are not responsible for any further rent payments.
6. The Landlord appealed Order LD24-146 on May 3, 2024.
7. The hearing was originally scheduled for June 4, 2024 at 1:00 p.m. At the request of the Landlord, said request received at 7:26 a.m. on June 4, 2024, the hearing was postponed. The Commission rescheduled the hearing for June 19, 2024 at 1:00 p.m.
8. The Commission heard the appeal by way of telephone conference call commencing on June 19, 2024. During that hearing, the Panel Chair adjourned the hearing pursuant to Rule 63(g) of the Commission’s Rules of Practice and Procedure (the “Commission Rules”). The Commission then rescheduled the hearing and issued a Notice of Continuation of Hearing confirming the date and time of the continuation hearing as June 27, 2024 at 2:00 p.m. by telephone conference call.
9. In a June 25, 2024 email to the parties, Commission General Counsel, acting on the instructions of the Commission, provided a letter of direction to the parties. This letter set out the background, including a summary of the conduct which the Panel Chair found to be in contravention of the Commission Rules. This letter also set out procedural directions and expectations with respect to conduct to ensure the hearing proceeded in an orderly and timely matter that is fair.

10. The Landlord, Madelaine Venart participated. The Tenants Mikalia MacLaurin and Jeremy MacDonald participated.

C. DISPOSITION

11. The appeal is dismissed and Order LD24-146 is confirmed.

D. SUMMARY OF EVIDENCE

12. The Landlord alleged that the Tenants had dug up and removed outside plants at the rental property. The Landlord alleged that the Tenants had caused damage to the rental property beyond ordinary wear and tear; including scratches to the flooring. The Landlord alleged that the Tenants failed to maintain sufficient heat, a pipe then froze in November 2023, causing a flood with thousands of dollars of damage, including gyprock damage, to the basement of the rental property. The Landlord also alleged that the Tenants cracked a window, had a lack of respect for the Landlord's property, and she has not been able to rent the rental property since the Tenants moved out. The Landlord asserted that the Tenants owed her over \$3600 in rent.
13. The Tenants stated that they had paid all the rent and their e-transfer statements establish that no rent is owing. They testified that the pipe had frozen in February 2022, they were present in the rental property at that time and informed the Landlord of this. They submitted that pipes do not freeze in Prince Edward Island in November. They testified that there were only three ducts for the forced air heat with only one duct for that end of the rental property. They testified that the heat pump is at the other end of the rental property. They testified that they had a baby and were not paying for the heat and thus common sense would indicate that they were not going to keep the rental property cold. They testified that they paid the Landlord a security deposit of \$1100 in two payments of \$550. They testified that their security deposit has not been returned to them. They denied removing outdoor plants from the rental property.

E. ANALYSIS

Terms of the Written Rental Agreement

14. According to Exhibit E-7, a rental agreement dated May 13, 2020, the tenancy began on June 1, 2020 for a single family home with a rent of \$1100.00 per month. A security deposit of \$1100.00 was to be paid in two installments – the first installment due on the "1st of June" and the second on the "first of July". A notation of "\$550.00 owing" was written in the security deposit provisions of the rental agreement. Exhibit E-12 provides e-transfer receipts for the first and second security deposit payments. The evidence before the Commission establishes that the tenancy ended when the Tenants moved out at the end of February 2024. The Commission finds that the Tenants had paid the full security deposit.

Landlord's Claim of Rent Owning

15. The Landlord claims that the Tenants owed her rent dating back to a period of time in 2022 when rent payments were missed. The Landlord refers to her CIBC transaction history (Exhibit E-30) pages 113 to 116 of the Commission file record.
16. The Tenants maintain that they did catch up on their rent in 2022 and do not owe any money for rent. The Tenants refer screenshots of e-transfers from Tangerine to the Landlord (Exhibit E-37) pages 134 to 142 of the Commissions file record.
17. The Commission has analyzed the two sets of records. The Tenant's Tangerine records from 2022 indicate the following payments to the Landlord, totalling \$3,450.00, which do not show on the Landlord's CIBC transaction history:
 - May 9, 2022 \$200.00
 - June 2, 2022 \$200.00
 - July 19, 2022 \$200.00
 - August 14, 2022 \$650.00
 - October 17, 2022 \$400.00
 - November 2, 2022 \$560.00
 - November 3, 2022 \$\$1,240.00
18. The Commission finds that there is a substantial discrepancy between the CIBC receipt records of the Landlord and the Tangerine payment records of the Tenants. A close inspection of the details of the records is therefore warranted.
19. Examining Exhibit E-30, the Landlord's CIBC records, the Commissions notes that the transaction history found at page 114 of the Commission's file record is stated to cover the period Jan 01, 2022 – Dec 31, 2022. The inquiry date is listed as Apr 08, 2024 02:38 PM. The transaction history specifies an amount of \$1,000.00 - \$1,200.00. Credits to that account of less than \$1000.00 or more than \$1200.00 would not appear on that transaction history and thus none of the Tenant payments contained in the bulleted items above would show on that transaction history.
20. Likewise, the transaction history found at page 115 of the Commission's file record has an inquiry date of April 8, 2022 at 2:44 p.m., covers the period May 1, 2022 to July 31, 2022, and pertains to an amount ranging from \$500.00 to \$1,700.00. Credits under \$500.00 would not show on that transaction history.
21. Given that the transaction histories that the Landlord printed on April 8, 2024 cover only a limited range of credits and this range excludes the bulleted payments from the Tenants to the Landlord, the Commission gives full weight to the Tenant's evidence with respect to the payment of rent. Accordingly, the Commission rejects the Landlord's claim that rent is owed.

Landlord's Claims of Damage and Cleaning

22. The evidence before the Commission supports a finding that a pipe froze in or about February 2022 causing water damage to the basement. The evidence satisfies the Commission that the Tenants promptly made the Landlord aware of this situation. While

the Landlord argues that the Tenants did not keep the rental property warm enough, the Commission accepts the Tenants' argument that they did as they were not paying for the heat and had a baby. Simply put, there was no reason for the Tenants to scrimp on heat. The Commission rejects the notion that the pipe froze in November 2023 in the absence of climate evidence to support record low temperatures in November 2023.

23. With respect to damage to the floors the Landlord has provided photographs showing damage and no damage to the flooring. In the absence of date stamps directly on the pictures, the Commission cannot give significant weight to the pictures. Pictures showing no damage could have been taken many years before, or alternatively, been taken after floors had been refinished, replaced or repaired.
24. With respect to the crack in the window, the Commission is not satisfied that this occurred due to any actions of the Tenants.
25. With respect to allegations that the Tenants failed to adequately clean the rental property, the Commission quotes the following text message from the Landlord to the Tenants:

MAR 03 AT 12:09 PM

*You sure cleaned it up niceeeeeee
Thank you I am sure my new renter will appreciate all you did to have it
ready and I appreciate it so much
Xo*

26. Based on evidence from shortly after the Tenants moved out, the Commission finds that the Landlord was satisfied with the state of cleanliness.

Return of Security Deposit

27. As noted under the heading of Terms of the Written Rental Agreement, the Commission found that the Tenants had paid two payments of \$550.00 each for a total security deposit of \$1100.00. That security deposit was to be held by the Landlord and returned to the Tenants unless the Landlord made a claim against that security deposit in full compliance with section 40 of the *Residential Tenancy Act* (the "Act"). The Tenants moved out of the rental property on the last day of February 2024, that is to say February 29, 2024. To comply with section 40 of the *Act*, the Landlord had to file an application making a claim against the security no later than March 15, 2024. The Landlord did not file such Form 2(B) application until April 16, 2024 (Exhibit E-42). The Commission finds that the Landlord failed to comply with the requirements of section 40 of the *Act* and therefore must, pursuant to subsection 40(4) of the *Act*, return double the security deposit to the Tenants, together with interest.
28. The Commission is mindful that the Landlord's Form 2(B) is dated "March 3". However, that document bears the stamp *RECEIVED APR 16 2024 DIRECTOR OF RESIDENTIAL TENANCY*. While the Landlord may possibly have filled out the Form 2(B) on the same date as her appreciative text message to the Tenants, subsection 40(1) of the *Act* requires a landlord to make application to the Director within 15 days of the termination of the tenancy. The Landlord's Form 2(B) thus could not have been made to the Director before it was received by the Director.

29. The appeal is denied. The Commission agrees with the determination set out in Rental Office Order LD24-146, subject to a variation in the calculation of interest to the date of the Commission's Order.

F. CONCLUSION

30. Appeal dismissed. The terms of Order LD24-146 are confirmed, with a return of double the security deposit, an updating of the calculated interest to the date of issuance of the Commissions Order, and a determination that no further rent is required.

IT IS ORDERED THAT

1. The appeal is dismissed.
2. Order LD24-146 is confirmed, subject to a variation (updating) of the calculation of interest.
3. The Tenants are awarded double the security deposit plus interest on the original security deposit in the amount of \$2,250.13, calculated as follows:

Security Deposit – as paid \$1,100.00
Interest (\$550.00; May 30 2020 to July 3, 2020) \$0.51
Interest (\$1,100.00; July 4, 2020 to Date of Commission Order \$49.62
Double Award of Security Deposit per subsection 40(4) of the Act \$1,100.00

Total \$2,250.13

4. The Landlord must pay the Tenants \$2,250.13 by August 15, 2024.
5. The Tenants are not responsible for any further rent payments to the Landlord for any periods before or after February 29, 2024.

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.