



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: July 26, 2024

Dockets: LR 24039

Type: Rental Appeal

INDEXED AS: Clifford Murl v. George Tsimiklis

Order No: LR24-45

BETWEEN:

Clifford Murl (the "Tenant")

Appellant

AND:

George Tsimiklis (the "Landlord")

Respondent

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 25, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy should be terminated.

B. BACKGROUND

2. On May 6, 2024, the Tenant 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 29, 2024, effective May 15, 2024, (the “Notice”). The Notice was given to the Tenant for the following reasons:

You have permitted an unreasonable number of people in the rental unit;
You or someone you have allowed on the property have disturbed or endangered others;
You or someone you have allowed on the property have engaged in illegal activity on the property;
You or someone you have allowed on the property has caused damage to the rental unit;
You have failed to comply with a material term of the tenancy agreement; and
You have knowingly given false information about the rental unit.

3. On May 21, 2024, a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). A Landlord Representative (the “Representative”) and a Landlord Witness participated on behalf of the Landlord. The Tenant and two Tenant Witnesses participated on behalf of the Tenant.
4. On May 30, 2024, the Rental Office issued Order LD24-174, wherein the Rental Office ordered that the tenancy agreement between the parties shall terminate effective 5:00 pm on June 7, 2024. The Tenant shall vacate the Unit by this date and time.
5. The Tenant appealed Order LD24-174 on June 3, 2024.
6. The Commission heard the appeal on June 25, 2024, by way of telephone conference call. The Tenant and his witness Holly Gallant participated. Teddy Zaghloul, the Landlord’s representative, also participated in the hearing. Mike Perry, a witness for the Landlord, participated for part of the hearing.

C. DISPOSITION

7. The appeal is allowed and Order LD24-174 is reversed. The tenancy agreement between the parties continues.

D. SUMMARY OF EVIDENCE

8. The evidence submitted by the parties pertained primarily to whether damage was caused to the Landlord’s Residential Property (as defined by the *Residential Tenancy Act*) by the Tenant’s two sons and whether the sons were on the Landlord’s Residential Property (hereinafter the “Premises”) with the permission of, or at the invitation of, the Tenant.

9. The Tenant testified that the sons have not been welcomed at the Premises in the recent past by the Tenant and that the front door of the Premises is unlocked and therefore anyone can enter the building. He cannot control who enters the building through the front door. He testified that he cannot control who comes into the building but insisted that he is not inviting his sons to the Premises and that he has told them he does not want them to go to the Premises.
10. Holly Gallant testified that she lives in the same building as the Tenant. She testified that the security doors to the Premises are not locked and that she has witnessed the Tenant telling his two sons to stay away from the Premises and that she has seen the sons outside on the sidewalk.
11. Mr. Zaghoul is the Landlord's property manager. He testified that the Tenant first moved into the Premises in June 2011. Mr. Zaghoul testified that the Tenant's sons have caused damage including breaking fire alarms and destroying a door. He stated that the tenant's sons were on the sidewalk as recently as two weeks ago. He claimed that the Tenant is not truthful. He testified that the Tenant's sons keep coming back to the Premises and the tenant lets them in to his rental unit, often through the patio door. He testified that only the Tenant can unlock his patio door. Mr. Zaghoul testified that a witness saw the Tenant's sons going through the Tenant's patio door. Mr. Zaghoul testified that he did not witness the behaviour of the Tenant's sons, but one of the security guards did. He stated that when the police were called the sons would hide. He stated that he did not like to call the police. He added that the tenant called the police. Mr. Zaghoul testified that the police have visited the Premises over 12 times. Mr. Zaghoul testified that he gave a final written warning to the Tenant on April 29, 2024 shortly before serving the eviction notice. When asked what behaviour he witnessed of the Tenant and his sons, Mr. Zaghoul admitted that he did not personally witness the matters with respect to which he testified; he did not personally witness the sons being present at, or causing damage to, the Premises. He also did not dispute the assertion that the front door of the apartment building is kept unlocked.
12. Mr. Perry testified that he has seen one of the Tenant's sons enter the Tenant's rental unit through patio door on at least two occasions. He has also seen the sons leaving by the front door of the Premises. He testified that he has seen the Tenant letting his sons into the rental unit but when asked for details, he stated that he saw the door sliding open and that he did not see the Tenant opening the door for the son. Mr. Perry testified that the Tenant's sons were served with papers and they threw the papers on the ground. Mr. Perry testified that he has seen one of the Tenant's sons, along with the mother of that son's child, at the landlord's Premises at various times. Mr. Perry departed the hearing before it was completed.

E. ANALYSIS

13. First, as a preliminary address, the Commission will address the Landlord's Form 4(A)s. In evidence before the Commission are two Form 4(A) Eviction Notices, both of which are dated April 29, 2024 and both of which give an effective date of May 15, 2024 (16 days), which is insufficient notice under the *Residential Tenancy Act* (the "Act"). Exhibit E-6 is a Form 4(A) stating that the Landlord is Lynn Murray. Exhibit E-11 is a Form 4(A) stating that the Landlord is Teddy Zaghoul. The actual Landlord is not named on either of the

forms, and Section 53 of the *Act* requires that a notice of termination is to be signed and dated by the landlord. Order LD24-174 indicates that Mr. Zaghloul relied on the Form 4(A) bearing his name as the other Form 4(A) incorrectly checked off the line “there is an order requiring the rental unit to be vacated”.

14. The Commission also notes that the Officer in Order LD24-174 specified the correct effective date for the Form 4(A) as May 31, 2024 but did not cite any authority for this correction. The Commission observes that section 54 of the *Act* deems the effective date to be changed to conform with the *Act*. The Commission agrees that the effective date can be changed in accordance with section 54 and that the earliest compliant effective date would have been May 31, 2024.
15. The Commission concludes that the Eviction Notices are both confusing and incorrectly completed, however the Tenant clearly understood that the intention of the forms was to have him evicted as he took steps to contest the eviction.
16. In terms of the issues before the Commission, Order LD24-174 sets out the sections of the *Act* that provide the relevant law, namely:
 - Section 25 – tenant and persons admitted to the residential property shall not unreasonably interfere with the rights, quiet enjoyment and reasonable privacy of a landlord or other tenants in the residential property;
 - Subsection 61 (1) – citing in particular clauses (c), (d), (e), (f), (h) and (j).
17. In Order LD24-174, the Officer found that the Landlord had established valid grounds pursuant to clause 61(1)(d) of the *Act*. The Officer found that the Landlord had not established a breach of clauses 61(1) (c) [unreasonable number of occupants], (e) or (f) [illegal activity and damage], (h) [material term] or (j) [false information]. The Landlord did not contest the Officer’s findings in this regard in the appeal before the Commission.
18. The Commission agrees with the Officer’s analysis pertaining to clauses 61(1) (c), (e), (f), (h), and (j).
19. The Commission is, however, of the view that clause 61(1)(d) requires greater consideration. This clause 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:

...

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord’s property at significant risk;*

20. The focus of the Landlord's case against the Tenant is that he has permitted his sons on the Premises and the Tenant's sons have caused damage to the Premises. Documents on file with the Commission include pictures of damage, invoices for repair, warning letters to the Tenant and emailed statements from Mr. Zaghloul to the Rental Office describing the situation.
21. The Commission has observed in many past Orders that in seeking the eviction of a tenant, the onus rests on a landlord to present evidence to support a finding. Thus, to succeed in this Appeal, the Landlord must prove that, on a balance of probabilities, the alleged actions of the nature contemplated by clause 61(1)(d) occurred and that the persons doing such actions were permitted on the Premises by the Tenant.
22. The evidence of Mr. Zaghloul represents a mix of things he has observed, such as physical damage to the Premises, as well as what he has been told and believes to be true. With respect to his testimony as to alleged facts which he does not have personal knowledge of, the Commission does not give significant weight to such testimony in the event contradictory direct evidence is presented by an opposing party.
23. In summary, Mr. Zaghloul is aware of substantial damage to the Landlord's Premises, supported by pictures and repair invoices but does not have direct knowledge of the cause of the damage. He believes, based upon information provided by others, that the Tenant's sons caused the damage. He did not see the Tenant's sons do the damage, nor did he witness the Tenant allowing the Tenant's sons into the Premises. He did not view a security tape showing the Tenant's sons doing the damage. He was informed of disturbing behaviour but has not witnessed the behaviour nor did he (other than in respect of Mr. Perry's testimony discussed below) offer letters or emails of complaints from those who may have witnessed such behaviour.
24. Mr. Perry, whose role was not identified at the hearing before the Commission but was described in Order LD24-174 as a caretaker who does not live in the Premises, provided evidence of events he witnessed. He has seen the Tenant's sons enter and exit the Premises by way of the exterior doors and by way of the Tenant's patio door sliding open. He has not testified before the Commission as to seeing the Tenant's sons cause the damage. Unfortunately, Mr. Perry did not attend the entire hearing and the Commission was unable to obtain any additional evidence from him.
25. The Landlord has not provided a witness who lives in the Premises to testify as to experiencing alleged disturbing behaviour committed by the Tenant's sons. No witness has testified to actually seeing the Tenant's sons in the act of damaging or destroying the Landlord's fire alarms, railings, security door or other property of the Landlord. The Landlord has not provided security camera images or videos to establish who caused the damage and destruction. The Landlord has not provided any reports from the police to link the damage to the Tenant's sons.
26. The Tenant testified that people other than his sons have entered the property and caused trouble. Ms. Gallant, who lives in the Premises, testified that the security doors are not locked.
27. The evidence before the Commission makes a compelling case that the damage was done to the Premises which may well have put the Landlord's property at risk; however, the

Landlord has not provided sufficient evidence to establish that the damage was caused by any person or persons permitted on the Premises by the Tenant, which is required in order to evict the Tenant under subsection 61(1)(d) of the *Act*. Accordingly, the Commission allows the appeal and reverses the termination of the tenancy agreement ordered in Order LD24-174.

F. CONCLUSION

28. Appeal allowed. The termination of the tenancy agreement ordered in Order LD24-174 is reversed and the tenancy agreement shall continue between the parties.

IT IS ORDERED THAT

1. The appeal is allowed.
2. The termination of the tenancy agreement ordered in Order LD24-174 is reversed.
3. The tenancy agreement between the parties shall continue.

DATED at Charlottetown, Prince Edward Island, 26th 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.

