



Date Issued: July 26, 2024
Dockets: LR24044
Type: Rental Appeal

INDEXED AS: Nishan Kooner and Chantal Ramnana v. Susanna Buote
Order No: LR24-46

BETWEEN:

Nishan Kooner and Chantal Ramnana (the "Landlords")

Appellants

AND:

Susanna Buote (the "Tenant")

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 10, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord’s Form 4(A) Eviction Notice was invalid and, therefore, the tenancy between the parties continues.

B. BACKGROUND

2. This appeal concerns a rental unit located at 8 Chestnut Street, Charlottetown (the “Rental Unit”). The Rental Unit is a three-bedroom, one-bathroom townhouse. The Tenant has lived in the Rental Unit for almost 14 years. The Tenant and the former landlord had a verbal, month-to-month tenancy agreement. The Landlords purchased the Rental Unit in July 2023 and the tenancy continued. Rent is \$780.00 due on the first day of each month. No security deposit was required.
3. On June 3, 2024 the Tenant filed a Form 2 (A) Tenant Application to Determine Dispute (the “Application”) with the Rental Office disputing an eviction notice. The Application also seeks repairs in the Rental Unit. The Application was accompanied by a Form 4 (A) Eviction Notice (the “Eviction Notice”).
4. The Eviction Notice was dated May 27, 2024, effective June 30, 2024. It indicates the tenancy agreement is being terminated for the following reason:

You have sublet the rental unit without the landlord’s consent.

The particulars of termination state:

You have been renting out rooms, subletting, without permission from myself or the previous landlord. On top of subletting without landlord permission, it is against the law to charge more than your total rent when subletting.

5. On June 18, 2024, a teleconference hearing was held before the Rental Office. The Tenant and her witness participated, as well as one of the Landlords and a witness for the Landlords.
6. In Order LD24-200, issued June 20, 2024, the Rental Office allowed the Tenant’s Application to set aside the Eviction Notice and ordered that the tenancy would continue. Order LD24-200 also ordered the Landlords to repair certain items in the Rental Unit.
7. The Landlord appealed Order LD24-200 on June 21, 2024.
8. The Commission heard the appeal on July 10, 2024, by way of telephone conference. Nishan Kooner attended on behalf of the Appellants (Landlords), Susanna Buote (the Tenant) attended and was represented by Karen Vey. Both parties also had witnesses testify on their behalf.

C. DISPOSITION

9. The appeal is dismissed.

D. SUMMARY OF EVIDENCE

Landlord's Evidence

10. The Landlord's evidence consisted of written statements from the Tenant's purported subtenants and the former landlord. He also submitted a written statement and copies of documents and applications filed with the Rental Office in respect of ongoing matters between the Tenant and the purported subtenants.
11. The Landlord's written statement indicates that he became aware of an issue with the Tenant and possible unauthorized sublets about six months prior. He installed a security camera and monitored the coming and going of people living in the Rental Unit. He spoke with one of these individuals and learned he and his brother were subletting a room in the Tenant's Rental Unit, and that two other subtenants were living there as well (collectively referred to as the "Subtenants"). He also became aware that the Tenant was allegedly charging rent to the Subtenants that was more than what she herself was paying monthly. He states he "immediately" drafted the Eviction Notice and taped it to the Tenant's door.
12. The Landlord's testimony at the hearing was consistent with his written submissions. He testified that the Tenant's unauthorized sublet was "at his expense" because the Tenant was "pocketing the money" and the operating expenses he was paying for 5 tenants in the Rental Unit was more than for just the Tenant herself. However, he also testified that he wants the Subtenants to take over the tenancy.
13. The Landlord also called two witnesses. First was the former landlord of the Rental Unit (the "Former Landlord"). The Former Landlord confirmed that there was no written tenancy agreement between he and the Tenant. He testified that he never gave the Tenant permission to sublet the Rental Unit. However, the Former Landlord also testified that he was aware the Tenant had people living with her for longer-term periods (e.g. months at a time), and when asked by the Panel, the Former Landlord testified that he never had a conversation with the Tenant about the people who lived in the Rental Unit and that they had no discussions about limiting who could live there. The Former Landlord's evidence was unclear as to how long the Tenant had people living with her; however, he did say it was "off and on for years".
14. The Landlord testified that when he purchased the building, he only had general conversations with the Former Landlord about the existing tenancies and did not realize the Tenant was subletting her Rental Unit until he noticed people coming and going.
15. The Landlord also called a second witness. The focus of that witness's testimony was largely with respect to the amount of rent being charged by the Tenant to the Subtenants.
16. In summary, the Landlord's position on appeal is that the *Residential Tenancy Act* does not require him to give a warning to the Tenant before evicting her due to an unauthorized sublet, and that he was denied a legal eviction solely because the Tenant claimed she did not know she needed his written consent. The Landlord's evidence also makes it clear

that a primary concern of his is the amount of rent the Tenant is allegedly charging the Subtenants. In fact, he testified that he would like the Subtenants to take over the tenancy of the Rental Unit should the Tenant be evicted.

Tenant's Evidence

17. The Tenant's evidence included two written submissions, and her testimony at the hearing.
18. In summary, the Tenant's evidence is that she did not have a written tenancy agreement with the Former Landlord, and that the Former Landlord knew she had people living with her, and she was never told that was not allowed. Her testimony was that when the Landlord bought the Rental Unit, she did not sign a tenancy agreement and was never told she could not have someone live with her. In fact, the Tenant's written statement that accompanied her Application to the Rental Office alleges that the Landlord was aware that there was someone living with her when he kept her as a tenant after purchasing the building.
19. At the hearing, the Tenant's submissions concluded by saying that if she would have known the Landlord would not continue to permit her to have people live with her, she would have corrected the situation and this could have been straightened out very quickly.
20. The Tenant also had two witnesses testify on her behalf. Their testimony largely focussed on conversations the Tenant had with the Rental Office in respect of the other ongoing proceedings between the Tenant and Subtenants before the Rental Office.

E. ANALYSIS

Preliminary Comments Respecting Scope of Appeal

21. As a preliminary comment to the analysis that follows, we feel the need to clarify what this appeal is about, and what it is not about. This appeal is with respect to the Landlord's effort to evict the Tenant in accordance with clause 61(1)(i) of the *Residential Tenancy Act* because the Tenant purported to sublet the Rental Unit without first obtaining the written consent of the Landlord. **That is the only matter in issue before the Commission on this appeal.**
22. The Commission has heard the serious allegations against the Tenant that she was charging an exorbitant amount of rent to the Subtenants well above what she herself was paying monthly. This is not permitted by the *Residential Tenancy Act*; however, that alleged violation of the *Act* is between the Tenant and the Subtenants (i.e. not the Landlord), and we understand proceedings with respect to those allegations are ongoing before the Rental Office. That matter and those allegations are, therefore, **not before the Commission on appeal** and we will not be making any comment or findings in respect of them.
23. We should also point out that the Landlord did not appeal the findings in Order LD24-200 with respect to required repairs in the Rental Unit. Therefore, this Order does not disturb those findings, and the Landlord is required to make the repairs as ordered in Order LD24-200.

Eviction for Sublet Without Consent (Clause 61(1)(i))

24. The Landlord's Eviction Notice indicates the tenancy agreement is being terminated for the following reason:

You have sublet the rental unit without the landlord's consent.

The particulars of termination state:

You have been renting out rooms, subletting, without permission from myself or the previous landlord. On top of subletting without landlord permission, it is against the law to charge more than your total rent when subletting.

25. The *Residential Tenancy Act* permits a landlord to end a tenancy by giving notice to the tenant where the tenant purports to sublet the rental unit without first obtaining the landlord's written consent as required by section 30 of the *Act* (section 61(1)(i)).
26. In Order LD24-200, the Residential Tenancy Officer found that while the Tenant did sublet rooms in the Rental Unit without the Landlord's express written consent, the Tenant nevertheless believed she had permission to sublet because she had implied consent from the Former Landlord. For this reason, the Officer allowed the Tenant's Application to dispute the Eviction Notice and permitted the tenancy to continue.
27. In the specific circumstances of this case, the Commission comes to a similar conclusion as the Residential Tenancy Officer in Order LD24-200.
28. First, the Tenant did not dispute that the Subtenants lived at the Rental Unit. However, the evidence convinces us that Tenant had implicit consent from the Former Landlord to sublet the Rental Unit. The Former Landlord himself testified that he knew the Tenant had people living with her in the 3-bedroom townhouse, but that he never discussed this with her, nor did he limit how many people could live in the Rental Unit. It is important to note here that the former *Rental of Residential Property Act* was in force for much of the time when the Former Landlord owned the Rental Unit (the "Former Act"). While the Former Act did require a landlord's consent to a sublet or assignment, it did not specify that the consent had to be "written" in the same way the new *Residential Tenancy Act* specifies. We are satisfied that the conduct of the Former Landlord in permitting the Tenant to have people live with her implied this consent to sublet some of the bedrooms in the Rental Unit.
29. In July 2023, the Landlord purchased Rental Unit. His evidence was that he had general conversations with the Former Landlord about the existing tenancies at that time, but only realized the Tenant was subletting the Rental Unit when he eventually noticed people coming and going. The Tenant's written submission accompanying her Application suggests the Landlord was aware people lived with her when he kept her as a tenant after purchasing the building.
30. On this point, we can make no determinative finding of what the Landlord did or did not know about the Tenant's subletting when he purchased the Rental Unit. However, it is clear that for years the Former Landlord allowed the Tenant to sublet some of the bedrooms in the Rental Unit to various individuals. There was no written lease agreement between the Tenant and Former Landlord, and therefore, in these specific circumstances,

we find it reasonable for the Tenant to have understood it to be a term of her tenancy that she could sublet rooms in her 3-bedroom townhouse without asking each time. We note here that we do not make any finding today on whether the Tenant was correct about this understanding, we only conclude that it was not unreasonable for her to have had that understanding in the circumstances.

31. Flowing from this, we understand how the Tenant could have concluded the permission to sublet would not change with the new Landlord, *at the very least* without notice to her from the new Landlord that he would not tolerate continued subletting without his express consent. In other words, it stands to reason that the Tenant did not seek the Landlord's written consent to sublet some of the bedrooms in the Rental Unit because she thought she already had it.
32. In the Commission's mind, this understanding of the Tenant becomes more reasonable in light of the Landlord's own evidence that he would like the Subtenants to stay living in the Rental Unit, despite seeking to terminate his tenancy with the Tenant.
33. In conclusion, in the specific circumstances of this case, we find that the Landlord has not established a valid basis to terminate the tenancy on the basis that the Tenant did not obtain his consent to sublet some of the bedrooms in the Rental Unit.

F. CONCLUSION

34. The appeal is dismissed.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-200 is confirmed.**

DATED at Charlottetown, Prince Edward Island, 26th 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.