



Date Issued: September 5, 2024
Dockets: LR24045
Type: Rental Appeal

INDEXED AS: Jacy McMillan and Taylor Gillis v. Racha Al-Mayaleh
Order No: LR24-53

BETWEEN:

Jacy McMillan and Taylor Gillis (the "Tenants")

Appellants

AND:

Racha Al-Mayaleh (the "Landlord")

Respondent

ORDER

Panel Members:

Douglas M. Clow, Acting Chair
Murray MacPherson, 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 August 13, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in denying the Tenants’ Application requesting, among other things, compensation from the Landlord for a bad faith eviction.

B. BACKGROUND

2. This appeal concerns a rental unit located at 84 Hillsborough Street, Charlottetown (the “Rental Unit”). The Rental Unit is one unit in a triplex building (the “Residential Property”). The Tenants entered into a written, fixed-term tenancy with the former landlord for the period of September 1, 2022, to September 1, 2023. The tenancy continued as a month-to-month agreement. The Landlord purchased the Residential Property in November 2023, and the tenancy continued on the same terms. Rent was \$1,600.00 due on the first day of each month with utilities included. The Tenants paid a security deposit of \$1,600.00 in August 2022.
3. The Tenants vacated the Rental Unit on January 31, 2024. On February 28, 2024, the Tenants filed a Form 2(A) Tenant Application to Determine Dispute with the Rental Office (the “Application”). Their Application claimed compensation from the Landlord for an alleged bad faith eviction. The particulars of the dispute state:

Told us he was moving daughter in, we have proof that he was re-renting for year long leases. Illegally raised rent. We are seeking moving compensation and security deposit fee on new apartment. Plus one month’s rent. \$2398.25.

4. On May 28, 2024, a teleconference hearing was held before the Rental Office. The Tenants both participated and were joined by a representative. The Landlord and the Landlord’s representative also participated.
5. On June 5, 2024, the Rental Office issued Order LD24-181 denying the Tenants’ Application and claim for compensation. The Residential Tenancy Officer found that without service of a notice of termination in accordance with the *Residential Tenancy Act*, the Officer did not have authority to award bad faith compensation pursuant to section 65 of the *Act*.
6. The Tenants appealed Order LD24-181 on June 24, 2024.
7. The appeal was ultimately heard by the Commission on August 13, 2024, by way of telephone conference. The Tenants both appeared and were represented at the hearing by Patrick Aylward (the “Tenant Representative”.) The Landlord appeared and represented herself, along with her father, Michel Al-Mayaleh (referred to herein as the “Landlord’s Agent”).

C. DISPOSITION

8. The appeal is allowed.

D. SUMMARY OF EVIDENCE

Tenant's Evidence

9. The Tenants' evidence included written submissions, screen shots of text conversations with the Landlord and Landlord's Agent, and their testimony at the hearing.
10. In summary, the Tenants' evidence is that they understood they had to be out of the Rental Unit by May because the Landlord was moving in. Therefore, they looked for a new apartment and were able to find one in mid-January. They testified that they jumped at the opportunity when they found a new apartment, because they could not be sure they would find one come May. They pay \$1595 per month for rent at their new apartment, but utilities are not included. Their new apartment is less conveniently located because it is further from their school, and they had to buy all new furniture, because the Rental Unit had been fully furnished.
11. The Tenants testified that they understood the Landlord Agent's text message to them on November 25, 2023, was the formal notice that the Landlord was moving in and they needed to, therefore, find a new apartment. They testified that they did not know the Landlord or Landlord's Agent needed to provide them with a certain form from the Rental Office to give them this notice.
12. The Tenants testified that they vacated the Rental Unit at the end of January 2024, and when they asked the Landlord's Agent for their security deposit, he refused to return it on the basis that they had not given one month's notice before moving out. Eventually, the Landlord did return half of their security deposit (\$800).
13. The Tenants also testified to a conversation with the Landlord's Agent wherein he asked them if they could pay a rent increase of \$300 per month. When the Tenants questioned whether this was "legal", they testified he responded by saying it was a waste of his time to go through the formal process and if they could not pay more, his daughter would move in.

Landlord's Evidence

14. The Landlord's evidence consisted primarily of screen shots of text conversations with the Tenants and her father (the Landlord's Agent), as well as her testimony and submissions at the hearing.
15. The Landlord testified that she is the owner of the Residential Property, and that her father, the Landlord's Agent, was authorized to act on her behalf in respect of this tenancy. Sometimes this Order will refer to the Landlord and Landlord's Agent collectively as the "Landlords".
16. In summary, the Landlord testified that when she purchased the property in November 2023, the plan was for her and her husband to move-in in May 2024. On November 25, 2023, the Landlord's Agent sent a text message to the Tenants advising them that the intention was to use the Rental Unit for his daughter, and they could discuss a time that was convenient for the Tenants to move out.

17. The Landlord's evidence was that the parties had agreed the Tenants would move out in May. She pointed to a text message dated January 7, 2024, that reads, in part "You finish school in May so that was when you wanted to leave". The Landlord testified that, based on this agreement, she expected she would move into the Rental Unit in May. It was her submission at the hearing that because the Landlord's Agent first gave notice in November that the Landlord would be moving into the Rental Unit, they gave appropriate notice pursuant to subsection 62(1) of the *Residential Tenancy Act*.
18. The Landlord submitted that because the Tenants moved out at the end of January, instead of May which was agreed upon, she could not move into the Rental Unit immediately and had no choice but to advertise the apartment for rent in February 2024. The Landlord testified that the Rental Unit was re-rented effective February 1, 2024.
19. With respect to the security deposit, the Landlord's submission was that the Tenants only gave 15 days notice before moving out, instead of one month's notice, and this is why the security deposit was not returned. She testified that on February 23, 2024, the Landlord's Agent served notice on the Tenants to keep the security deposit. However, she went on to say that the Landlord's Agent eventually gave back half of security deposit (\$800) in good faith.
20. Finally, regarding the rent increase, the Landlord submitted that the Landlord's Agent gave notice to the Tenants in person in December 2023 that rent would be increasing. Her evidence was that the parties agreed to a rent increase of 3% to take effect in February 2024.

E. ANALYSIS

21. This appeal asks the Commission to consider whether the Tenants are entitled to the relief claimed in their Application, filed with the Rental Office on February 28, 2024.
22. The Tenants' Application checks the box claiming compensation from the Landlord for a bad faith eviction. It also states the following particulars:

Told us he was moving daughter in, we have proof that he was re-renting for year long leases. Illegally raised rent. We are seeking moving compensation and security deposit fee on new apartment. Plus one month's rent. \$2398.25.

23. Order LD24-181 of the Rental Office only dealt with whether or not the Officer had authority to consider a claim for bad faith eviction. However, the Commission notes that the Tenants' Application requests four things (paraphrased):
 - A. Claim of bad faith eviction;
 - B. Illegal rent increase;
 - C. Security deposit; and
 - D. Moving compensation and one month's rent.

24. An appeal to the Commission, per subsection 89(8), is heard by way of a re-hearing, and the Commission has the discretion to receive and accept new evidence and information, and to make any decision or order that the Director is authorized to make. The statutory requirement for a re-hearing requires that the Commission make its own decision based on the entire record.¹
25. The evidence and submissions of the parties at the hearing before the Commission clearly spoke to three of the four grounds of relief. Therefore, despite the Rental Office only considering the claim for a finding of bad faith eviction in Order LD24-181, the Commission will also consider the Tenants' claim regarding the illegal rent increase and security deposit.
26. With respect to the Tenants' claim for compensation for moving expenses and one month's rent, neither party provided evidence nor made submissions with respect to this ground. Similarly, Order LD24-181 did not adjudicate this claim in any way. Therefore, though the Tenants did make application for this relief, the Commission will not make a finding in respect of this claim on appeal. However, the Tenants may wish to pursue this claim through the Rental Office to determine whether they have a valid claim for this compensation pursuant to section 72 of the *Residential Tenancy Act*.

Bad Faith Eviction

27. The *Residential Tenancy Act*, at section 65, permits a former tenant to make application to the Rental Office to determine whether a landlord gave a notice of termination under sections 62, 63, or 64 in bad faith.
28. In Order LD24-181, the Residential Tenancy Officer found that the evidence was undisputed that neither the Landlord nor the Landlord's Agent served a notice of termination for "own use" (i.e. under section 62 of the *Act*). The Officer found that the Landlord Agent's text message on November 25, 2023, only "vaguely" pointed to the intention of family use for the Rental Unit, but that there is "no document before the Officer that can be properly characterized as a notice of termination." On that basis, the Residential Tenancy Officer denied the Tenants' claim for bad faith compensation.
29. With respect, the Commission disagrees with the finding of Order LD24-181.
30. Order LR24-35 previously issued by the Commission considers whether and when a tenancy was terminated by a tenant via text message to the landlord. That Order considers sections 53 and section 100 of the *Residential Tenancy Act*, and found that a series of text messages from the tenant gave sufficient detail to the landlord to be considered notice of termination of the tenancy between them. We find something similar in this case.
31. Subsection 62(1) of the *Act* permits a landlord to give a notice of termination to a tenant where they require the rental unit for their own use, or their child's use, for a period of at least one year. The Landlord first gave notice via text message on November 25, 2023. Excerpts from those text messages read:

¹ *Perry v. Kings Square Affordable Housing*, 2023 PESC 32, at para 22.

... I'd like to let you know, I'm going to use the home for my family, can we meet to discuss that? ...

... This won't be happening right now. I am not rushing it. ...

... I don't want it right now for family use, it will be a time that works for all of us and that gives you a chance to find a place.

32. The parties' evidence was consistent about a conversation that took place in early December 2023 where it was discussed the Tenants would move out by May 2024. This is reflected in a text message from the Landlord on January 7, 2024, which states, in part:

... You finish school around May so that was when you wanted to leave. ...

...I'm not at all in a rush for you guys to leave as your plans, the May date is fine with me. Just keep me posted if you find something and we will figure it out. ...

33. The Commission agrees with the finding of the Residential Tenancy Officer that there was no document provided to the Tenants that can be considered a "notice of termination"; however, the evidence is undisputed that by January 7, 2024, at the latest, *both parties* clearly knew and understood the Tenants had to move out by May 2024 because the Landlord was moving in. The Landlord's own evidence was that the Landlord's Agent gave appropriate notice per section 62 of the *Act*, and that, in fact, he gave more notice than was required per subsection 62(4).

34. We note that section 53(f) of the *Residential Tenancy Act* requires that where a landlord gives a notice of termination, that notice shall be in the approved form. In this case, the Landlords did not follow the Act and did not give the Tenants a notice of termination on the approved form. However, in the Commission's opinion, the Landlords' failure to follow section 53(f) the Act in giving the Tenants notice of the termination cannot then shield the Landlords from their other obligations under the *Residential Tenancy Act* to terminate tenancies in good faith and in accordance with the provisions of the *Act*. To find otherwise would allow the Landlords, and others, to benefit from their own failure to follow the requirements of the Act, and would lead to an unreasonable application of the *Residential Tenancy Act* in these circumstances.

35. The Commission, therefore, finds that the Landlords gave notice to the Tenants, under section 62, that the tenancy would be terminated for the Landlord's own use by May 2024. It follows that the Commission does have authority to consider the Tenants' Application seeking compensation for a bad faith eviction under section 65 of the *Act*.

36. Subsection 65(4) of the *Act* provides:

Presumption

- (4) For the purposes of an application under subsection (1), it is presumed, unless the contrary is proven on a balance of probabilities, that a landlord gave a notice of termination under section 62 in bad faith if, at any time during the period described in subsection (5), the landlord
- (a) advertises the rental unit for rent;

- (b) enters into a tenancy agreement in respect of the rental unit with someone other than the former tenant; or
- (c) advertises the rental unit, or the residential property that contains the rental unit, for sale.

Period

- (5) The period referred to in subsection (4) is the period that
 - (a) begins on the day the landlord gives the notice of termination under section 62; and
 - (b) ends one year after the former tenant vacates the rental unit.

37. In this case, the Tenants vacated the Rental Unit on January 31, 2024, and the Landlords advertised the Rental Unit for rent and entered into a tenancy agreement with a new tenant in February 2024. The presumption of bad faith, therefore, applies.

38. The Landlord has argued that the Tenants moving out in January 2024 was a “breach of the agreement” between the parties and that it was not adequate notice as required by subsection 53(4) of the *Act*. She submitted that she could not move into the Rental Unit until May 2024, and the Tenants’ early departure was the reason they had to re-rent the Rental Unit in February 2024. Unfortunately for the Landlord, this is a misunderstanding of the relevant provisions of the *Residential Tenancy Act* in these circumstances.

39. First, subsection 69(1) of the *Act* provides that where a landlord gives a notice of termination to a tenant under certain sections, including notice under section 62, the tenant may end the tenancy early by giving the landlord at least 10 days’ notice. In this case, we found that the Landlords gave notice to terminate the tenancy as of May 2024 under section 62. This notice was given by January 7, 2024, at the latest. The Tenants then gave notice on January 15, 2024, that they would be out of the Rental Unit by the end of January. In other words, the Tenants’ gave 16 days’ notice that they would be leaving early.

40. Further, when landlords give notice to tenants that they are terminating a tenancy for the landlord’s own use, they cannot expect that tenants will arrange their affairs in a way that is perfectly convenient for the landlord. Section 69 of the *Act* specifically contemplates this, and allows tenants to leave early without penalty. It is incumbent on landlords to be aware of and follow the provisions of the *Residential Tenancy Act* when terminating a tenancy. In this case, the burden of having the Rental Unit vacant for a few months before the Landlord was ready to move in was the Landlord’s burden to bear. The Commission finds that Landlord’s unfamiliarity with the provisions of the *Act* and their obligations under it does not rebut the presumption of bad faith in this case.

41. Where the Director, or the Commission on appeal, determines that a landlord gave a notice of termination in bad faith, subsection 65(6) authorizes various orders for relief:

Order when notice brought in bad faith

- (6) Where the Director, the Director may issue one or more of the following orders:
 - (a) an order that the landlord pay a specified sum to the former tenant for

- (i) all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit, and
- (ii) reasonable out-of-pocket moving, storage and other similar expenses that the former tenant has incurred or will incur;
- (b) an order for an abatement of rent;
- (c) an order that the landlord pay to the Director an administrative monetary penalty in an amount not exceeding \$10,000; or
- (d) any other order that the Director considers appropriate.

42. In this case, the Commission considers it appropriate to make an order for relief in accordance with clause 65(6)(a), and award the Tenants all of their increased utility costs that they have incurred for a one-year period after vacating the Rental Unit.

43. The Tenants have provided evidence that their monthly rent at their new apartment is \$1,595.00. However, it does not include utilities. They have provided documentary evidence and submissions that they pay an additional \$110.00 per month for utilities at their new apartment. The monthly rent at the Rental Unit was \$1,600.00, utilities included. Therefore, the Tenants are out of pocket an extra \$105.00 each month. Over a one-year period, this amounts to \$1,260.00.

44. In the circumstances, the Commission declines to grant any specific order in respect of clause 65(6)(a)(ii).

45. In conclusion, the Commission finds that the Landlords gave notice of termination to the Tenants in bad faith, and orders the Landlord to pay to the Tenants \$1,260.00.

Security Deposit

46. The Tenants paid a security deposit of \$1,600.00 when they moved into the Rental Unit. The evidence of the parties was consistent that the Landlords have returned only half of that amount, being \$800.00.

47. The Tenants vacated the Rental Unit on January 31, 2024. The evidence of both parties is that on February 23, 2024, the Landlord's Agent served the Tenants with a Form 2(B) Landlord Application to Determine Dispute seeking to retain the Tenants' security deposit. The Form 2(B) was filed with the Rental Office on February 22, 2024. Text message exchanges between the parties show that on February 26, 2024, the Landlord agreed to return a portion of the security deposit (\$800.00) and withdraw his Form 2(B).

48. Section 40 of the *Residential Tenancy Act* governs the return of security deposits and sets the requirements a landlord must follow in order to make a claim against a security deposit. The Residential Tenancy Act imposes a strict 15-day time limit. A landlord is required to either return the security deposit or make an application to the Director claiming against the security deposit, within 15 days after the tenancy ends (subsection 40(1)). Where a landlord does not comply with subsection 40(1), they are prohibited from claiming against

the security deposit and must pay the tenant “double the amount of the security deposit” (subsection 40(4)).

49. In the present matter, the Landlords did not file the Form 2(B) application until February 22, 2024, more than 15 days after the Tenants vacated the Rental Unit. The Landlords then withdrew the Form 2(B) application and only returned half of the Tenants’ security deposit.
50. Unfortunately, the Landlords misinterpreted their obligations with respect to security deposits under the *Residential Tenancy Act*. The language of section 40(4) is non-discretionary and the Act is clear on the consequences for a landlord failing to return the security deposit and failing bring application before the Rental Office within 15 days after the tenancy ends.
51. Accordingly, the Commission finds that the Landlords shall pay the Tenants double the amount of the withheld security deposit, plus accrued interest on the withheld deposit amount:

Withheld Security Deposit	\$800.00
Interest on Security Deposit ²	\$32.25
Double Withheld Security Deposit per s. 40(4)	<u>\$800.00</u>
Total	\$1,632.25

52. The total amount the Landlord must pay to the Tenants in respect of the security deposit is: \$1,632.25

Rent Increase

53. The *Residential Tenancy Act* includes a comprehensive scheme with respect to rent increases. The Act is clear that a landlord shall not increase rent, except in accordance with the Act (s. 47(1)).
54. First, the Act limits a rent increase to the allowable annual increase established by the Director of Residential Tenancy (s. 49(1)). In 2024, this amount was 3%.³
55. Next, where a landlord increases the amount of rent payable, the landlord shall give the tenant written notice of the increase (s. 48(1)). In the case of a month-to-month tenancy, the notice period is at least three months (s. 48(2)(b)).
56. In this case, the evidence of both parties was clear that the Landlords did not follow this process in attempting to impose a rent increase on the Tenants. The Landlord’s Agent first sought to increase monthly rent by an amount that far exceeds 3%. When the Tenants

² Calculated from August 1, 2022 to the date of this Order.

³ The *Act* also permits a landlord to request the Director’s approval of a rent increase in an amount greater than the allowable annual increase established by the Director (s. 50(1)). Such an application was not made in this case.

challenged this proposed increase in January 2024, the Landlord's Agent sought the allowable annual increase of 3%; however, he expected it to take effect in February 2024.

57. The Landlord's Agent did not serve written notice of the increase to the Tenants, nor did he provide a notice period in accordance with the Act.
58. For these reasons, we find that the Landlord's Agent sought to increase the rent in violation of the *Residential Tenancy Act*. In the circumstances of this case, the evidence satisfies us that the Tenants did not ever pay any amount for the proposed rent increase, so we will exercise our discretion to not award a remedy on this ground. **However**, we strongly caution the Landlord and the Landlord's Agent that it is their obligation to be aware of and follow the provisions of the *Residential Tenancy Act* with respect to rent increases. Order LD24-181 states that at the hearing before the Rental Office, the Landlord "stated she did not know about the rent control provisions of the Act." The Commission cautions the Landlord that ignorance of those obligations is not a defence.

Compensation and Moving Expenses

59. With respect to the Tenants' claim for compensation for moving expenses and one month's rent, as noted above, neither party provided evidence nor made submissions with respect to this ground. Similarly, Order LD24-181 did not adjudicate this claim in any way. Therefore, though the Tenants did make application for this relief, the Commission will not make a finding in respect of this claim on appeal. However, the Tenants may wish to pursue this claim through the Rental Office to determine whether they have a valid claim for this compensation pursuant to section 72 of the *Residential Tenancy Act*.

F. CONCLUSION

60. The appeal is allowed.
61. The Commission finds, pursuant to section 65 of the *Act*, that the Landlords gave a notice of termination to the Tenants under section 62 in bad faith. Accordingly, the Landlord shall pay to the Tenants the amount of \$1,260.00 as compensation for this bad faith eviction.
62. The Landlords failed to comply with section 40 of the *Act* and, therefore, shall pay the Tenants double the amount of the withheld security deposit, plus accrued interest on the withheld deposit amount, in the total amount of \$1,632.25.
63. In total, the Landlord shall pay to the Tenants the total amount of \$2,892.25.

IT IS ORDERED THAT

- 1. The appeal is allowed.**
- 2. The Landlord shall pay to the Tenants the total amount of \$2,892.25 on or before September 20, 2024.**
- 3. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the Act.**

DATED at Charlottetown, Prince Edward Island, 5th day of September, 2024.

BY THE COMMISSION:

(sgd. Douglas Clow)

Douglas M. Clow, Acting Chair

(sgd. Murray MacPherson)

Murray MacPherson, 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.