



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

**Date Issued: October 2, 2024**

**Dockets: LR 24055**

**Type: Rental Appeal**

INDEXED AS: Darryl McQueen v. Jodi Messett

Order No: LR24-61

**BETWEEN:**

Darryl McQueen (the "Landlord")

**Appellant**

**AND:**

Jodi Messett (the "Tenant")

**Respondent**

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## ORDER

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Panel Members:

Kerri Carpenter, Commissioner  
M. Douglas Clow, Acting Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

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Commission Clerk

Island Regulatory and Appeals Commission

## **A. INTRODUCTION**

1. This appeal was heard by the Commission on September 10, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord shall pay the Tenant \$1,548.38 by August 13, 2024.

## **B. BACKGROUND**

2. On April 18, 2024, the Landlord filed an amended *Landlord Application to Determine Dispute* (Form 2(B)) (the “Landlord Application”) with the Residential Tenancy Office (the “Rental Office”), seeking rent owing in the amount of \$4,000.00 and \$300.00 in compensation for cleaning and damages.
3. On June 3, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Tenant Application”) with the Rental Office requesting a return of rent in the amount of \$2,000.00, as the Landlord contravened the Tenant’s right to quiet enjoyment, the Tenant was evicted in bad faith, and the Tenant had suffered a loss or incurred a cost due to a breach of the Act or tenancy agreement by the Landlord.
4. On July 9, 2024, a teleconference hearing was held before the Residential Tenancy Officer (the “Officer”). The Landlord, the Tenant, and two Tenant witnesses participated in the hearing.
5. Order LD24-237 was issued by the Residential Tenancy Office on the 24<sup>th</sup> day of July, 2024, specifying that the Landlord shall pay the Tenant \$1,548.38, by August 13, 2024.
6. The Landlord appealed Order LD24-237 on August 6, 2024.
7. The Commission heard the appeal on September 10, 2024, by way of telephone conference call. The Landlord, Darryl McQueen, and the Tenant, Jodi Messett, attended the tele-hearing. Amanda Jackson and Heidi Frankfurt testified on behalf of the Tenant.

## **C. DISPOSITION**

8. The appeal is dismissed and Order LD24-237 is confirmed.

## **D. SUMMARY OF EVIDENCE**

9. The Landlord testified that the parties had a verbal tenancy agreement. The Tenant moved in to the rental premises in the middle of September 2023 and he understood that she would stay until June 2024. In early January he was advised by the Tenant that she was considering buying a house and then moving out of the rental premises. He drew the Commission’s specific attention to text messages found on pages 49, 50, 53, 140 and 141 of the Commission file documents. He testified that he had previously given the Tenant one months free rent in total, consisting of a half month free rent in September and half priced rent in December. He stated that he did not intend to collect the other half of the rent for September and December, however, when she decided to leave in January 2024 rather than in June, he felt she should pay those amounts. In terms of a final walk through

to inspect the premises, he stated that the parties had agreed to an inspection date and time, but the Tenant cancelled, re-scheduled, then blocked him and then unblocked him to say she was not coming to the walk through inspection. He maintains that the Tenant had left the windows open after she left the rental premises.

10. The Tenant testified that the parties discussed in September 2023 that she could stay until May or June 2024 if she wanted to. The Tenant testified that the Landlord did not want a written tenancy agreement and he did not want to be paid the rent by way of e-transfer. No security deposit was required or paid. She testified that she was delayed in getting cash to pay the rent in early January 2024. At the time she paid the rent in early January 2024 she informed the Landlord that she was going to put in an offer on a house. She testified that from then on she saw another side of the Landlord. She testified that he told her he wanted her out before the end of January 2024. She testified that the RCMP advised her to block the Landlord and leave as soon as possible. She testified that the Landlord wanted to do a walk through but she declined.
11. Amanda Jackson testified as to negative interactions between the Landlord and the Tenant. Ms. Jackson was with the Tenant when the Tenant spoke with the RCMP and was advised to leave the rental premises as soon as possible. Ms. Jackson testified that she assisted the Tenant in moving out. The rental premises were cleaned and windows were not left open.
12. Heidi Frankfurt testified that she had become aware of the issues between the Tenant and the Landlord and had seen some of the text messages. She testified that the Tenant had appeared “rattled”. Ms. Frankfurt assisted the Tenant in moving from the rental premises. Ms. Frankfurt testified that the rental premises were left in good condition.

## **E. ANALYSIS**

13. The Commission has reviewed the documents on file carefully, including the various text messages exchanged between the parties. These messages demonstrate that what had appeared initially as a warm landlord and tenant relationship abruptly changed in early January 2024 when the Tenant advised the Landlord that she would likely be leaving the rental premises prior to June 2024. The Landlord then reacted to this information and informed the Tenant that she was to leave the rental premises before the end of January 2024.
14. The Commission finds that the Tenant had paid the full monthly rent of \$2000.00 in early January 2024. The Commission finds that the Landlord waived the payment of rent for September 2023, which otherwise would have been a half month’s rent as the Tenant moved into the rental premises in mid September 2023. The Landlord had also attempted to waive rent for the entire month of December 2023 but the Tenant offered to pay half rent in the amount of \$1000.00 and the Landlord accepted this payment. The Commission finds the Landlord cannot now require payment for the rent he previously waved.
15. Subsection 11(1) of the Residential Tenancy Act (the “Act”), which came into force on April 8, 2023, requires a landlord to prepare a written tenancy agreement. Subsection 11(2) sets out what shall be included in the tenancy agreement. Subsection 11(3) requires a

landlord to provide the tenant with a copy of the tenancy agreement within 10 days of the party entering into that agreement.

16. In the present appeal, there is no written tenancy agreement and therefore the Landlord failed to comply with section 11 of the Act. Without a written tenancy agreement, the Commission must look to each party's subjective understanding of the verbal agreement. For example, the Landlord maintains the Tenant *would* rent the rental premises until June 2024. The Tenant maintains that she *could* rent the rental premises until May or June 2024.
17. A review of the text messages make it clear to the Commission that the Landlord had not set out terms, parameters or conditions for not charging rent for the latter half of September 2023 and for only accepting half a month's rent in December 2023. Accordingly, the Commission finds that the Tenant is not bound to pay these funds to the Landlord.
18. The Tenant did pay full rent in the amount of \$2000.00 for the month of January 2024. The Tenant then moved out of the rental premises on January 7, 2024. The Tenant and her witnesses have testified to the circumstances leading up to the Tenant vacating the rental premises on January 7, 2024. The Commission finds that by early January 2024, the landlord / tenant relationship had suddenly and rapidly broken down. The Commission further finds that vacating the rental premises and an early termination of the verbal tenancy agreement was in the best interests of both parties to avoid further escalation.
19. In Order LD24-237, the Residential Tenancy Officer dismissed the Landlord's application seeking rent owing in the amount of \$4000.00 and compensation for cleaning and damages in the amount of \$300.00. The Residential Tenancy Officer dismissed the Tenant's application for \$2000.00 for a breach of quiet enjoyment, an eviction in bad faith and a breach of the Act or the tenancy agreement. However, given that the Tenant had paid rent for the full month of January 2024, the Residential Tenancy Officer awarded a partial return of rent, pro-rated for the seven days in January 2024 that the Tenant lived in the rental premises, in the amount of \$1,548.39.
20. After reviewing the evidence on file as well as the testimony of the parties and the Tenant's witnesses, the Commission finds that there is no evidence or compelling reasons which would justify a reversal or a variance of Order LD24-237. Accordingly, the Commission dismisses the appeal and confirms Order LD24-237.

## **F. CONCLUSION**

21. The appeal is dismissed and Order LD24-237 is confirmed. The Landlord shall pay the sum of \$1,548.38, representing a pro-rated return of rent, to the Tenant within 15 days of the date of the Commission's Order.

**IT IS ORDERED THAT**

1. The appeal is dismissed.
2. Order LD24-237 is confirmed.
3. The Landlord shall pay the Tenant \$1,548.38. This payment must be made within 15 days of the date of this Order.

**DATED** at Charlottetown, Prince Edward Island, 2<sup>nd</sup> day of October, 2024.

**BY THE COMMISSION:**

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(sgd. Kerri Carpenter)  
Kerri Carpenter, Commissioner

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(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.