



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: November 22, 2024

Dockets: LR 24060

Type: Rental Appeal

INDEXED AS: Melissa Griffin v. 101728 PEI Inc.

Order No: LR24-64

BETWEEN:

Melissa Griffin (the "Tenant")

Appellant

AND:

101728 PEI Inc. (the "Landlord")

Respondent

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 September 24, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that tenancy shall terminate effective on September 9, 2024.

B. BACKGROUND

2. On August 1, 2024, the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the “Application”) with the Residential Tenancy Office (the “Rental Office”) disputing an *Eviction Notice (Form 4(A))* (the “Notice”). The Notice was served by a Landlord representative (the “Representative”) to the Tenant on July 31, 2024, effective September 1, 2024, for the following reasons:

*You or someone you have allowed on the property have disturbed, endangered others, or put the landlord’s property at significant risk; and
You or someone you have allowed on the property have engaged in illegal activity on the property.*

3. On August 27, 2024, a teleconference hearing was held with the Tenant, the Tenant’s representative, the Representative, and the Residential Tenancy Officer (the “Officer”).
4. The Tenant notified the Officer prior to the hearing that she was unable to review the Landlord’s evidence. Before the hearing began, the Representative attended the Rental Unit and the Tenant was able to view the video the Representative had submitted into evidence. The Officer also read aloud the statement the Representative had submitted into evidence. The Tenant was satisfied with this review of the Landlord’s submitted evidence and understood the reason for the Notice.
5. The Residential Tenancy Office issued Order LD24-283 dated August 9, 2024, which ordered the Tenancy terminated effective September 9, 2024.
6. On August 30, 2024, the Tenant appealed Order LD24-283 to the Commission.
7. The Commission heard the appeal on September 24, 2024, by way of telephone conference. The Tenant, Melissa Griffin, attended the hearing and the Landlord representative, Victor Zhou attended the hearing. Patricia Caudle testified on behalf of the Tenant.

C. DISPOSITION

8. The appeal is allowed and Order LD24-283 is reversed.

D. SUMMARY OF EVIDENCE

9. The Landlord’s evidence included a video. The video was captured by surveillance cameras at the premises, and it provided a view of the exterior of a portion of the building

in which the Tenant's rental unit is located. The Tenant acknowledged that she can be seen in the video, as well as the man that lives in the neighbouring unit.

10. The video shows the Tenant and a neighbour (J.G.). There appears to be a verbal interaction, where the neighbour is sitting outside. The tenant then stands up, and it appears liquid from the cup is splashed. It is unclear of the extent to which the liquid contacts J.G., however it is clear that some liquid makes contact with the exterior wall of the building, close to where J.G. was sitting
11. The Tenant testified that J.G. had provoked her and her coffee hit the wall and not J.G. She stated that she has known J.G. for many years. She acknowledged that J.G. got splashed. She stated that the coffee was not hot. They had an argument and J.G. called her a name which was a trigger from her past. The Tenant referred to the letter provided by her doctor.
12. Patricia Caudle testified that the Tenant has known J.G. for about 20 years. Ms. Caudle stated that while the Tenant is audible in the video J.G.'s comments cannot be heard.
13. Victor Zhou testified that the Tenant threw hot coffee at J.G. Mr. Zhou testified that the police were notified. He stated that he sought to evict the Tenant because she endangered another tenant. He stated that he was informed of the incident by other tenants. He stated that J.G. later came to his office, told him what happened and wrote a note. Mr. Zhou stated that someone else had called the police. Mr. Zhou stated that J.G. told him that he had refused to give the Tenant a beer and she then became angry at him. Mr. Zhou stated that J.G. did not appear as a witness before the Commission because he did not wish to confront the Tenant.

E. ANALYSIS

14. In the present appeal, the Tenant seeks to overturn the termination of her tenancy which was determined in Order LD24-283. Her tenancy had been terminated as a result of her alleged behaviour toward J.G. who is a neighboring tenant seen in a video which is in evidence in this appeal.
15. The Commission disagrees with the finding of the Rental Office in Order LD24-283 for the reasons set out below
16. In a matter where a landlord seeks to terminate a tenancy agreement based on the behaviour of a tenant pursuant to subsection 61(1) of the Residential Tenancy Act (the "Act"), the onus rests on the landlord to provide evidence on the civil standard of the balance of probabilities that one or more of the criteria set out in subsection 61(1) have been met.
17. In the present matter, the focus of the Landlord is on the actions of the Tenant as such actions affect another tenant or occupant. In Mr. Zhou's words, he sought to evict the Tenant because she endangered another tenant. The Landlord's original application to the Rental Office was based on clauses 61.(1)(d) and (e). Clause (d), as it pertains to another occupant, requires a tenant to significantly interfere, or unreasonably disturb or seriously jeopardize the health or safety or a lawful right or interest. Clause (e) as it pertains to another occupant requires a tenant to engage in illegal activity which adversely

affects or is likely to adversely affect the quiet enjoyment, safety or physical well being or has jeopardized or is likely to jeopardize a lawful right or interest. Order LD24-283 rejected the application of clause (e) but ordered a termination of the tenancy agreement based on the application of clause (d).

18. In this case, Mr. Zhou, the representative of the Landlord, did not witness the incident shown in the video. Mr. Zhou did not call J.G. as a witness to the incident at either the hearing before the Rental Office or at the hearing before the Commission. He instead relied on a handwritten note from J.G. Mr. Zhou testified before the Commission that the coffee was hot. By contrast, J.G. stated in his handwritten note that the coffee was “fairly warm”. This discrepancy serves to demonstrate the importance of providing direct testimony from the party with firsthand knowledge rather than relying solely on a note.
19. Much reliance has been made of the video which shows an interaction between the Tenant and J.G. just outside their unit doors. The video does have sound and the Tenant is audible but J.G. cannot be heard. The video shows most of the coffee going on the outside wall. The Tenant testified that J.G. said something to her that provoked and triggered her. While J.G.’s written note states the argument was over beer, J.G. was not present to testify and respond to questioning from the Tenant or from the Commission panel.
20. The evidence before the Commission is that J.G. did not himself contact the police; rather, the police were contacted by other tenants. These other tenants were not present to give their testimony. As part of a subsection 61(1) analysis the Commission takes notice that there are no police reports in evidence which might speak to illegal activity. Likewise, there is no medical report outlining any injuries to J.G. which might speak to matters of health, safety or physical well being.
21. The termination of a tenancy is a serious matter and accordingly a Landlord seeking to evict a tenant must put forward compelling evidence. Of particular concern in this case is the fact that the Landlord did not bring direct evidence from J.G. or any other tenant in the building to establish that they were disturbed or endangered, nor did the Landlord provide compelling evidence that his property was at risk as a result of the incident.
22. Mr. Zhou defended the absence of J.G. on the basis that J.G. does not wish to confront the Tenant. Given that the Commission’s hearings are conducted by telephone, and therefore there would not need to be a confrontation, the Commission does not accept this argument.
23. The Tenant has appeared and fully presented her side of the interaction shown in the video. However, the Landlord has not presented evidence beyond the video itself and a note from the other party to this interaction. Without hearing the words spoken and not having had the opportunity to hear from the other party to the incident, the Commission is not able to fully assess the evidence and the incident shown in the video.
24. The Commission therefore finds that the Landlord has not met the burden of proof to justify a termination of the tenancy agreement pursuant to subsection 61(1) of the Act. The Commission therefore reverses the decision of the Rental Office in Order LD24-283.

F. CONCLUSION

25. The appeal is allowed. Order LD24-283 is reversed and the tenancy agreement between the parties shall continue.

IT IS ORDERED THAT

1. The appeal is allowed.
2. Order LD24-283 is reversed.
3. The tenancy agreement between the parties shall continue.

DATED at Charlottetown, Prince Edward Island, 22nd day of November, 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.