



Date Issued: December 2, 2024
Dockets: LR24073
Type: Rental Appeal

INDEXED AS: Sean Michael Chapman v. 102503 PEI Inc.
Order No: LR24-66

BETWEEN:

Sean Michael Chapman (the "Tenant")

Appellant

AND:

102503 PEI Inc. (the "Landlord")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
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 November 7, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Tenant must pay the Landlord \$1,070.39 by October 31, 2024, and that the tenancy between the parties must terminate effective 5:00 pm on October 18, 2024.

B. BACKGROUND

2. The Unit is an apartment situated in a six-unit building (the “Residential Property”).
3. In March of 2022 the parties entered into a written, month-to-month rental agreement. On March 9, 2022 the Tenant paid a \$1,000.00 security deposit. On February 9, 2024 the parties signed a *Form 1 – Standard Form of Rental Agreement*, fixed-term agreement for the period of February 9, 2024 to June 30, 2024. Rent is \$1,025.00 due on the first day of the month. The tenancy agreement does not include electricity as a service.
4. On June 20, 2024 the Landlord’s representative filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Landlord’s Application”) with the Residential Tenancy Office (the “Rental Office”). The Landlord’s Application sought a monetary Order for unpaid electricity and repairs. The Landlord’s representative emailed the Landlord’s Application to the Tenant.
5. On July 30, 2024 the Landlord’s representative emailed a *Form 4 (A) Eviction Notice* (the “Notice”) dated July 30, 2024, and effective August 25, 2024 to the Tenant. The Notice was an older version of the standard form, which does not have a particulars of termination section. The Notice was also not signed by the Landlord’s representative.
6. The Notice seeks termination of the tenancy agreement for the following reasons:
 - i. *You have not paid your rent in the amount of \$1,070.39;*
 - ii. *You or someone you have allowed on the property have disturbed or endangered others; and*
 - iii. *You have not repaired damage to the rental unit.*
7. On August 8, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Tenant’s Application”) with the Rental Office to request repairs to the Unit. The Tenant’s Application also disputed the Notice. The Tenant emailed the Tenant’s Application to the Landlord’s representative. The Landlord’s Application and the Tenant’s Application are collectively referred to as “the Applications”.
8. On October 3, 2024 the Tenant, a witness for the Tenant, two representatives of the Landlord, and two witnesses for the Landlord participated in the hearing. The parties confirmed they received, and reviewed the evidence package. The Landlord’s representative submitted additional documentary evidence after the hearing.

9. The Residential Tenancy Office issued Order LD24-338 on October 11, 2024, which ordered the Tenant must pay the Landlord \$1,070.39 by October 31, 2024, and issued Order LD-339 on October 11, 2024, which ordered the tenancy between the parties must terminate effective 5:00 pm on October 18, 2024.
10. The Tenant appealed Order LD24-338 and Order LD24-339 on October 16, 2024.
11. The Commission heard the appeal on November 7, 2024, by way of telephone conference. The Tenant appeared on his own behalf and John Barrientos appeared on behalf of the Landlord, 102503 PEI Inc.

C. DISPOSITION

12. The appeal is allowed and Orders LD24-338 and LD24-339 are reversed.

D. SUMMARY OF EVIDENCE

13. The Tenant explained that he is responsible for electricity under the rental agreement. In the past his electricity bill was paid by his former roommate on some occasions and by his mother on other occasions. He now pays the electricity bill himself. He expressed concern that his meter is shared with another unit and the basement, stating that a friend who is a fully qualified electrician informed him of this. He stated that he was away from his apartment for 20 days. He later learned that the Landlord had started paying his electricity bill and this continued for months. The Tenant is now paying his electricity bill again direct to the utility and the Landlord is seeking reimbursement for past electricity bills totalling \$1,070.39.
14. Mr. Barrientos testified that the Landlord's staff had been experiencing difficulty accessing the rental unit for maintenance and repair, providing the Tenant with the required notice before attempting entry. Mr. Barrientos stated that the eviction is based on a breach of the rental agreement; specifically, the non-payment of the past electricity bills. He emphasized that the Tenant was asked to pay his past utility bills or face eviction.

E. ANALYSIS

15. In the February 9, 2024 rental agreement between the parties (Exhibit E-12), under paragraph 4. Services & Facilities, electricity is not checked off as an included service or facility. The Rental Office, in Order LD24-339 referred to subsection 60(6) of the *Residential Tenancy Act* (the "Act") and found that the Landlord had met the two requirements of that subsection of the Act. The Commission disagrees with this finding. Subsection 60(6) reads:

Unpaid utilities

60(6) A landlord may treat unpaid utility charges as unpaid rent and may give a notice of termination under this section where

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord;
and*
- (b) the utility charges are unpaid more than one month after the tenant is given a
written demand for payment of them. 2022,c.88,s.60.*

16. Complicating the issue is the fact that the Landlord, in February 2024, used the old standard form rental agreement rather than use the new Form 1 – Standard Form of Tenancy Agreement which has been required for all tenancies entered into since April 8, 2023. This Form is readily available on the Rental Office website. Pursuant to subsections 11(1) and (2) of the *Act*, it is the responsibility of landlords to prepare a written tenancy agreement.
17. Notwithstanding the Landlord's non-compliance with subsections 11(1) and (2) of the *Act*, clause 60(6)(a) was not met in this matter as that clause specifies "a tenancy agreement requires the tenant to pay utility charges to the landlord" (emphasis added). The rental agreement which was used simply indicated that the rent did not include payments for electricity service. It did not specify that the Tenant was to pay electricity charges to the Landlord. This would imply, without anything further written on that rental agreement, that the Tenant was responsible to pay an electricity bill in his name direct to the electric utility. It was the testimony of the Tenant that prior to his 20-day absence his roommate or his mother paid the electricity bill and that at present he pays the bill himself at the electrical utility office.
18. As the requirements of subsection 60(6) of the *Act* were not met, the accumulated electricity bills totalling \$1,070.39 cannot be considered rent and the present applications seeking a termination of the tenancy agreement for unpaid rent and the payment of \$1,070.39 to reimburse the Landlord cannot succeed.
19. In addition, the Form 4(A) eviction notice, dated July 30, 2024 and received by the Rental Office by email on August 23, 2024 (Exhibit E-8) was unsigned. Pursuant to clause 53(a) of the *Act*, a notice of termination shall be signed by the landlord in order to be effective. There is no signed version of this document in evidence before the Commission. Without a signed Form 4(A) in evidence, the eviction fails on that point alone.
20. While the Tenant testified that an electrician told him that his electric meter is covering another apartment and/or the basement, there is no testimony or letter from a qualified electrician to this effect. Accordingly, there is no persuasive evidence that the Tenant should not be responsible for the full \$1,070.30 of accumulated electricity bills paid for by the Landlord.
21. For the above reasons, the Commission allows the appeal and reverses Orders LD24-338 and LD24-339. The tenancy agreement shall continue.

F. CONCLUSION

22. The appeal of Orders LD24-338 and LD24-339 is allowed and said Orders are reversed. The tenancy agreement shall continue.

IT IS ORDERED THAT

1. The appeal is allowed and Orders LD24-338 and LD24-339 are reversed.
2. The tenancy shall continue.

DATED at Charlottetown, Prince Edward Island, 2nd day of December, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(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.