



Date Issued: December 4, 2024
Dockets: LR24067
Type: Rental Appeal

INDEXED AS: New London Bay Motel Inc. v. Crystal Allain
Order No: LR24-67

BETWEEN:

New London Bay Motel Inc. (the "Landlord")

Appellant

AND:

Crystal Allain (the "Tenant")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
Kerri Carpenter, 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 October 10, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy agreement shall continue in full force and effect.

B. BACKGROUND

2. On August 5, 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 August 31, 2024, for the following reason:

You or someone you have allowed on the property have disturbed, endangered others, or put the landlord’s property at significant risk; Pets.

The particulars of termination state:

“2 dogs that have been barking excessively and causing noise complaints. Also, unresponsive pet owner, dogs not on leash, lunging at tenants, when you have had ample warnings. Causing safety concern for other tenants.”

3. On August 20, 2024, a teleconference hearing was held with the Tenant, a Tenant witness, the Representative, and the Residential Tenancy Officer (the “Officer”).
4. The Residential Tenancy Office issued Order LD24-274 on August 27, 2024, which ordered that the tenancy agreement shall continue in full force and effect.
5. The Landlord appealed Order LD24-274 on September 16, 2024.
6. The Commission heard the appeal on October 10, 2024, by way of telephone conference. The Landlord, New London Bay Motel Inc., was represented by Allison Smith. The Tenant, Crystal Allain attended on her own behalf. Shelley Gauthier and James Gauthier attended as witnesses for the Landlord. Alyssa Gallant attended as witness for the Tenant.

C. DISPOSITION

7. The appeal is dismissed and Order LD24-274 is confirmed.

D. SUMMARY OF EVIDENCE

8. Mr. Smith stated that he was hoping to file a police report but was unable to do so. He testified that a tenant was bitten twice by the Tenant’s dog. The first time the tenant’s skin was not broken and a photograph was provided, see Exhibit E-10. The second time the tenant’s skin was broken and the tenant contacted the police. Mr. Smith received a text about the second bite but did not receive a picture of it. Mr. Smith stated that the tenant

was working the day of the appeal hearing and thus could not testify. Mr. Smith stated that the dog's barking is disturbing tenants and tenants are uncomfortable accessing the backyard. Mr. Smith stated that he never gave the Tenant permission for the dog. He acknowledged that two other units have pets. Their owners asked for permission and these pets do not cause any problems. He stated that the dog "was an excitable breed" and not appropriate for a small unit. He testified that he has heard the dog barking and seen the dog off leash. He stated that he was mowing the lawn and did not have his phone on him to take a video of the dog.

9. Ms. Gauthier testified that the dog had jumped on her husband and she asked the Tenant to keep her dog on a leash. Ms. Gauthier stated that she experiences anxiety due to the Tenant's dog. Ms. Gauthier stated that she works until the early hours of the morning and the dog interferes with her sleep by barking and howling. She typically awakes to the dog's barking once or twice a week. Ms. Gauthier referred to the videos of the dog which she had taken. She stated that she recognized the dog and it belongs to the Tenant.
10. Mr. Gauthier testified that the dog has jumped on him and caused him pain. The dog interferes with his sleep. The dog is often left outside and barks "half the night".
11. The Tenant stated that her dog does not bark; she stated that her dog whines. She stated that if her dog is out of visual sight that only is for a couple of minutes. She stated that she has sat outside and heard dogs barking – but it is not her dog. Her dog is good with kids and she has him tied. Her dog is about a year old and is playful. The tenant who says he was bitten also has a dog and his dog is bigger than her dog. She testified that she was not contacted by the police. She acknowledges that the dog in the videos is her dog. She had been looking after Ms. Gallant's dog earlier this year.
12. Ms. Gallant states that the Tenant's dog is "hyper", playful, jumps but does not bark or bite. The dog has been tied on a leash since the previous hearing before the Rental Office. Before that hearing, the dog was off leash a couple of times. She stated that the Tenant has sometimes let the dog off leash in the back field where there is nobody. She stated that the occupants of unit 5 have a feud with the Tenant.

E. ANALYSIS

13. The Landlord seeks to terminate the tenancy agreement on the basis of clause 61.(1)(d) of the Act. Upon a review of that clause, the Commission finds that the onus is on the Landlord to establish significant interference to or unreasonable disturbance to another occupant. Alternatively, the onus is on the Landlord to establish serious jeopardy to the health or safety or a lawful right or interest of the occupant.
14. There is no photograph of the bite that allegedly broke the skin of the other tenant. The tenant allegedly bitten did not testify; however, the Landlord explained why he was absent. There was no written statement from the tenant allegedly bitten the second time. There was no police report; and while the Landlord explained this was a time and access to information issue he did not request additional time from the Commission to file such report. There are videos of the dog; however, these videos are not time and date stamped.

15. The Commission has the testimony of the Landlord and Mr. and Ms. Gauthier; however, the Commission finds that such evidence is insufficient, on the civil standard of a balance of probabilities, to meet the onus required to evict the Tenant under clause 61.(1)(d) of the Act. Therefore, the Commission finds that an eviction of the Tenant under clause 61.(1)(d) is not warranted due insufficient evidence at this time.
16. However, Mr. Smith provided a warning letter to the Tenant dated April 1, 2024, stating that if the noise or digging cannot be controlled he would have to ask that “they vacate the premises”. Mr. Smith attached one page of the tenancy agreement, highlighting clause 4 which reads:

The Tenant may keep pets on the Property of only: 2 small pets or 1 large pet. If, at the sole discretion of the Landlord, this privilege is abused, or if the pets damage the Property, or if the pets cause problems or interfere with the use and enjoyment of the Property for the other tenants, the Landlord may revoke this privilege upon thirty (30) day’s notice.

17. In Order LD24-274 the Residential Tenancy Officer (the “Officer”) stated at paragraph 18:

The Officer notes that the alleged behaviour would more closely resemble a breach of a material term of the tenancy agreement, however the Landlord did not select this on the Notice. The tenancy agreement states that the Landlord may revoke a tenant's privilege to keep a pet upon thirty days' notice if the pet's behaviour becomes problematic. The Tenant was provided a written warning; however, the Tenant was not provided with thirty days' notice to re-home the pet and was instead served with the Notice.

18. The Commission agrees with the observations of the Officer. If problems persist, the Landlord needs to follow the terms of the tenancy agreement; that is to say provide thirty days’ notice that he is revoking the Tenant’s privilege to keep a pet. The Tenant would then have thirty days to either re-home the pet or move out of the rental unit. If neither happens, the Landlord would then make application to the Director based on a breach of a material term. A fresh application under clause 61.(1)(d) would also be possible with compelling evidence.

F. CONCLUSION

19. The appeal is dismissed and Order LD24-274 is confirmed.

IT IS ORDERED THAT

- 1. The appeal is dismissed.**
- 2. Order LD24-274 is confirmed.**
- 3. The tenancy agreement shall continue.**

DATED at Charlottetown, Prince Edward Island, 4th day of December, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)
M. Douglas Clow, Acting Chair

(sgd. Kerri Carpenter)
Kerri Carpenter, 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.