



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: December 6, 2024

Dockets: LR 24065

Type: Rental Appeal

INDEXED AS: Habbi Holdings Inc. v. Adele Kazmark

Order No: LR24-69

BETWEEN:

Habbi Holdings Inc. (the "Landlord")

Appellant

AND:

Adele Kazmark (the "Tenant")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Commissioner
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 October 9, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy agreement between the parties shall continue in full force and effect.

B. BACKGROUND

2. This appeal concerns a rental unit located at 10 – 41 Belvedere Avenue, Charlottetown, PEI (the “Rental Unit”). The Landlord and Tenant entered into a written month to month tenancy agreement in April, 2018. Rent is \$957.00 due on the first day of each month.
3. On July 24, 2024, the Landlord served an *Eviction Notice (Form 4(A))* (the “Notice”) to the Tenant. The Notice was served for the following reasons:

You have permitted an unreasonable number of occupants in the rental unit;
You or someone you have allowed on the property have disturbed or endangered others or put the landlord’s property at significant risk;
You or someone you have allowed on the property has caused damage to the rental unit;
You have not repaired damage to the rental unit;
You have failed to comply with a material term of the tenancy agreement; and
You have knowingly given false information about the rental unit.

The particulars of termination state:

“Tenant is hoarding and has 8 cats. Apartment has cockroaches and is filled beyond a reasonable amount of furniture. Apartment smells terrible b/c of cat feces. Cannot move inside the unit because of filth.

4. 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 the Notice.
5. The Tenant had also sought a permanent rent reduction of 10%, compensation of \$500.00, and determinations that:
 - A. *the Landlord did not act with due diligence and allowed cockroaches into the building;*
 - B. *the Landlord is responsible to replace all tenants’ belongings;*
 - C. *the Landlord’s employee is not qualified to spray in the rental units;*
 - D. *that the Landlord wants to evict the Tenant to raise the rent;*
 - E. *that the Landlord must inform future tenants of cockroaches in the building;*
 - F. *that the Landlord write an apology letter to the tenants in the building claiming responsibility for the cockroach infestation;*
 - G. *that the Landlord must reduce rent for all tenants by 10% due to the cockroach infestation.*

6. On September 5, 2024, a teleconference hearing was held with the Tenant, a Landlord representative, a Landlord witness, and the Residential Tenancy Officer (the "Officer").
7. The Residential Tenancy Office issued Order LD24-291 on September 11, 2024, in which it was ordered that the tenancy agreement between the parties shall continue in full force and effect. The Tenant's claims for compensation and a rent reduction were denied.
8. The Landlord appealed Order LD24-291 on September 12, 2024. The Tenant did not appeal Order LD24-291.
9. The Commission heard the appeal on October 9, 2024, by way of telephone conference. David Habbi attended on behalf of the Landlord and the Tenant, Adele Kazmark, attended on her own behalf.

C. DISPOSITION

10. The appeal is allowed and Order LD24-291 is reversed. The tenancy is terminated, effective January 31, 2025.

D. SUMMARY OF EVIDENCE

11. Mr. Habbi testified that the Tenant refused to permit spraying of the Rental Unit on multiple occasions. He stated that his own staff were refused entry for this purpose as well as staff for Legault Pest Control. Notice for spraying was provided three times. Only the first spraying of the Rental Unit occurred. He stated that there is also damage to the Rental Unit: the floor is lifting due to cat urine, there is mold under the flooring and in the gyproc. He suggested that because of this damage he will have to gut the apartment and complete a full renovation. He stated that the Tenant has been in the Rental Unit for 6 or 7 years. The terms of the rental agreement were no pets allowed; however, the tenant was permitted one cat. Then more cats came. The Landlord has issued warnings about the number of cats over the years.
12. The Tenant testified that she moved in seven years ago. She had four cats when she moved in. She had two cats at the time of Covid. She was then asked to care for some older cats so three more came in. Then three more cats arrived for a total of 8 cats. She stated that they all use a litter box and thus there is no damage. She had to temporarily locate them in the baby barn on the property before spraying for the one time the Rental Unit was sprayed. She has items stored in totes to facilitate spraying. She stated that you cannot get rid of cockroaches and it is not her problem. She denied the existence of mold. She did not give permission for the pictures that were taken. Out of concern for the cats she used mats to block the bottom of the bedroom doors. She questioned the effectiveness of the spray, stating Agriculture Canada stated that the spray was a toy with no teeth.

E. ANALYSIS

13. Under the *Residential Tenancy Act* (the “Act”), subsection 28(1) places a general obligation on a landlord to repair and maintain the Rental Unit. Under subsection 28(3), the tenant is responsible for ordinary cleanliness of the Rental Unit.

14. The *Rental Accommodation Regulations* (RAR) made under the *Public Health Act* provide more specific information with respect to owner [landlord] and tenant obligations. Section 9 of the RAR sets out responsibilities of the owner of the dwelling. Clause (c) of section 9 specifically requires the owner to:

take necessary precautions and undertake necessary treatment to prevent or eliminate infestations by cockroaches, bedbugs, fleas, silverfish, weevils, flies, rats, mice and any or all other pests. (EC142/70)

15. Section 14 of the RAR sets out tenant responsibilities. Clauses (a) and (g) are especially relevant in this appeal:

14. Responsibility of the tenant

The tenant shall

(a) Maintain his dwelling unit in a clean and sanitary condition

...

(g) cooperate with the owner and with other tenants to maintain bathrooms, toilet rooms, closets, halls, stairways, and other parts of the dwelling and the ground area pertinent thereto in a clean and sanitary, safe and tidy condition;

16. In the present appeal, the Landlord had an obligation to spray the Rental Unit and did attempt to do this on several occasions. The Tenant had an obligation to keep the Rental Unit clean, sanitary, safe and tidy.

17. In the present appeal, the Commission finds that the Tenant did not cooperate with the Landlord to declutter and ready the entire Rental Unit for spraying. As a result, the Landlord’s pest control company was unable to perform the necessary inspections and follow up sprays as there was too much clutter. The Tenant appears to take issue with the effectiveness of the spray; however, the Commission is of the view that a professional pest control company would use products that are both effective and approved for use in Canada. The Commission finds sub-clauses 61.(1)(d) (ii) and (iii) of the Act have been met, namely that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or put the Landlord’s property at significant risk.

18. Accordingly, the Commission allows the appeal and reverses Order LD24-291. The tenancy agreement between the parties shall be terminated.

19. With respect to the timing of the termination of the tenancy agreement, the Commission is mindful of the practical difficulties in moving the Tenant’s possessions, given the need for treatment of the Rental Unit and possible contamination of the possessions. Accordingly, given the unique fact circumstances in this instance, the Commission will

provide the Tenant with additional time to move out of the Rental Unit. The termination date shall be January 31, 2025 at 5:00 p.m.

F. CONCLUSION

20. The appeal is allowed and Order LD24-291 is reversed. The tenancy agreement between the parties is terminated, effective January 31, 2025 at 5:00 p.m.

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **Order LD24-291 is reversed.**
3. **The tenancy agreement between the parties shall terminate effective 5:00 p.m. on January 31, 2025. The Tenant and all occupants shall vacate the Rental Unit by this time and date. The Tenant will be responsible to continue to pay her rent in full during this time.**
4. **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, 6th day of December, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(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.