



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: December 13, 2024

Dockets: LR24070

Type: Rental Appeal

INDEXED AS: Julia Faye Wall v. Elmwood Estates

Order No: LR24-71

BETWEEN:

Julia Faye Wall (the "Tenant")

Appellant

AND:

Elmwood Estates (the "Landlord")

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 24, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy between the parties shall terminate effective 5:00 pm on September 30, 2024.

B. BACKGROUND

2. This appeal concerns a rental unit located at Apt. 1 – 135 Spring Street, Summerside, PEI (the “Rental Unit”). The Landlord and Tenant entered into a month to month tenancy agreement. Rent is \$690.00 due on the first day of each month.
3. On August 28, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”) seeking earlier termination of the tenancy agreement. The Landlord taped the Application to the Unit’s door. The particulars of the Application state:

- “1. *Constant/numerous noise complaints.*
2. *Constant/numerous police visits.*
3. *Numerous animal welfare visits.*
4. *Apartment is destroyed and uninhabitable.*”

4. On September 17, 2024 at 11:00 a.m. the Landlord joined the teleconference hearing with the Residential Tenancy Officer (the “Officer”). The Officer telephoned the Tenant’s telephone numbers but was unable to directly reach the Tenant. A person answered one of the Officer’s telephone calls and stated that the Tenant did intend to participate in the hearing. The hearing with the Tenant was adjourned to 1:00 p.m.
5. On September 17, 2024 at 1:00 p.m. the Landlord and the Tenant participated in a teleconference hearing with the Officer.
6. The Residential Tenancy Office issued Order LD24-307 on September 18 2024, which ordered that the tenancy agreement between the parties shall terminate effective 5:00 p.m. on September 30, 2024. The Tenant and all occupants must vacate the Rental Unit by this time and date.
7. The Tenant appealed Order LD24-307 on September 25, 2024, by filing a copy at the offices of Access PEI Summerside, which was received at the offices of the Island Regulatory and Appeals Commission on September 27, 2024.
8. The Commission heard the appeal on October 24, 2024, by way of telephone conference. The Tenant participated and Donald DesRoches participated as representative for Elmwood Estates. Cinda Gallant attended as a witness for the Tenant.

C. DISPOSITION

9. The appeal is allowed and Order LD24-307 is reversed. The tenancy shall continue.

D. SUMMARY OF EVIDENCE

10. The Tenant testified that although there were many police visits to the triplex apartment building there were only three visits to her Rental Unit and these were wellness checks. The Tenant described incidents which involved a neighbour in one of the other units and the police. The Tenant also noted the neighbour had called the humane society out of spite towards the Tenant. The Tenant stated that her Rental Unit had been broken into on several occasions. The Tenant attributes the disturbing incidents at the triplex to the neighbour and the neighbour's family members.
11. Mr. DesRoches referred to police reports and pictures on file. He stated that there was a conflict between people the Tenant had coming in and the people who had been living upstairs. He testified that he successfully evicted the people who were living in the apartment upstairs. He testified that after the police had secured the building he had taken the pictures of the Rental Unit with police permission. Two days later the Tenant was allowed to return to the Rental Unit. He acknowledged that he did not have an inspection report or pictures of the Rental Unit from when the Tenant first moved in. He stated that the lady in the apartment in back has complained of noise but he has not received a statement from her about the noise. The Landlord acknowledged that he had not served the Tenant with an eviction notice; rather, he filed a form with the Rental Office seeking an early eviction.

E. ANALYSIS

12. In the present appeal, the Landlord had sought an early termination of the tenancy agreement under subsection 61(7) of the *Residential Tenancy Act* (the "Act"). Subsection 61(8) sets out factors for the Director's consideration. The Director, also known as the Rental Office, must be satisfied that at least one of the factors set out in clause 61(8)(a) is supported by the facts and the Director must also be satisfied that clause 61(8)(b) has been met; namely

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice of termination under subsection (1) to take effect.

13. In Order LD24-307 the Residential Tenancy Officer (the "RTO") found that a standard termination of the tenancy agreement was warranted and ordered the termination of the tenancy even though no Form 4(A) eviction notice had been served on the Tenant. The RTO had considered but rejected an application for an early termination of the tenancy agreement, stating that he was "...not satisfied that it would be unreasonable or unfair to wait for the date that a notice of termination would have taken effect".

14. The Commission's concern centres around subsection 61(9) which says:

(9) Where the Director makes an order under subsection (7), it is unnecessary for the landlord to give the tenant a notice of termination.

15. The question becomes: Where the Director does not make an order for early termination under subsection 61(7), is a landlord required to give a notice of termination?
16. The Commission finds that notice to a tenant is essential for a termination of the rental agreement. Subsection 61(9) of the *Act* is a statutory exception to this notice requirement but that exception is conditional on the Director making an Order under subsection 61(7). To emphasize: The exception only applies if the subsection 61(7) Order has been made. Here, no such Order was made and thus the Landlord was required to serve the Tenant with a Form 4(A) eviction notice. That did not happen, and therefore the tenancy continues.
17. In making this finding, the Commission has reviewed and considered *Lucier v Saskatoon Real Estate Services Inc.*, 2023 SKKB 259 (CanLII). In *Lucier*, the Saskatchewan Court of King's Bench (the "Court") considered the early termination provisions in the Saskatchewan Residential *Tenancies Act*, 2006, SS 2006, c R-22.0001 (Saskatchewan RTA). The first three subsections of section 68 of the Saskatchewan RTA are quite similar to subsections 61(7), (8) and (9) of the *Act*. The Court determined at paragraph 17 and then further commented at paragraph 21:
- 17 From a purposive reading of the plain language used in s. 68, it is clear this is an emergency provision to be invoked in exceptional circumstances. Its application must be limited to such situations, where it would be unreasonable or inequitable to follow the general process under s. 58.
- [...]
- 19 Instead, the short-cut procedure was invoked even though at para. 8 of his decision the hearing officer specifically determined that on the face of it, s. 68 was not engaged. There was an insufficient factual underpinning to rule as the hearing officer ruled in this case.
- [...]
- 21 There would have been minimal prejudice to the landlord to have dismissed the application and referred the landlord back to the standard process under s. 58. Any potential loss was compensable by a future award of damages.
- [...]
- 25 Here, the hearing officer expressly found the criteria in s. 68 had not been met. That should have ended the inquiry and the landlord should have started the eviction process under the usual procedure as outlined in s. 58. [...].
18. The Commission agrees with the Rental Office that clause 61(8)(b) was not met and therefore an early termination was unwarranted. The Commission, however, disagrees with the implied finding by the RTO that a standard termination of a tenancy agreement may be exempted from a Form 4(A) eviction notice where there has been an early termination application. The Commission finds that in the absence of a successful early termination application and an Order effecting that application, a landlord must serve a Form 4(A) eviction notice on a tenant in order to obtain a standard termination of the tenancy agreement. Since the Landlord did not serve a Form 4(A) eviction notice on the Tenant, this appeal is allowed and the tenancy shall continue.

F. CONCLUSION

19. The appeal is allowed. Order LD24-307 is reversed and the tenancy shall continue as the Landlord had not served the Tenant with a Form 4(A) eviction notice.

IT IS ORDERED THAT

1. The appeal is allowed.
2. Order LD24-307 is reversed.
3. The tenancy shall continue.

DATED at Charlottetown, Prince Edward Island, 13th 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.