



Date Issued: December 17, 2024
Dockets: LR24066
Type: Rental Appeal

INDEXED AS: Susanna Buote v. Nwafar Vitus Ifeanyichukwu and Kelly Oghenekaro Atietie
Order No: LR24-72

BETWEEN:

Susanna Buote (the "Tenant")

Appellant

AND:

Nwafar Vitus Ifeanyichukwu and Kelly Oghenekaro Atietie (the "Sub-Tenants")

Respondents

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 October 10, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Tenant must pay each of the Sub-Tenants the amount of \$827.61.

B. BACKGROUND

2. This appeal concerns a rental unit located at 8 Chestnut Street, Charlottetown (the “Rental Unit”). The Rental Unit is a three-bedroom unit in a multi-unit building. The Tenant rented the Rental Unit from her own landlord (the “Landlord”), and paid \$780 per month for the unfurnished unit, excluding electricity and internet. The Rental Unit also did not include appliances. The Tenant lived in the Rental Unit for many years, before moving out in August 2024. In April 2024, the Tenant sublet one of the bedrooms in the Rental Unit to the Sub-Tenants. She charged them \$600 each to sublet the room. The sublet included electricity, internet, furnishings, some housekeeping services such as laundry and cleaning, and some groceries and meals.
3. On June 21, 2024, the Tenant filed two *Landlord Applications to Determine Dispute (Form 2(Bs))* with the Residential Tenancy Office (the “Rental Office”) pursuant to the *Residential Tenancy Act* (the “Act”). These applications sought vacant possession of the Rental Unit and an order for the Sheriff to put her in possession.
4. On June 24, 2024, the Sub-Tenants filed two *Tenant Applications to Determine Dispute (Form 2(As))* (the “Tenants’ Applications”) with the Rental Office claiming against the Landlord for unlawful rents.
5. On July 29, 2024 the Tenant filed two additional *Landlord Applications to Determine Dispute (Form 2(Bs))* with the Rental Office seeking vacant possession of the Unit and an order for the Sheriff to put the Tenant in possession. These applications also sought rent owing by the Sub-Tenants.
6. On August 15, 2024 the Tenant and the Sub-Tenants participated in a teleconference hearing with a Residential Tenancy Officer.
7. On August 23, 2024, the Rental Office issued Order LD24-272, which considered all of the parties’ claims as outlined above and ultimately ordered the Tenant to pay each of the Sub-Tenants the amount of \$827.61 by September 12, 2024.
8. The Tenant appealed Order LD24-272 on September 12, 2024.
9. The Commission heard the appeal on October 10, 2024, by way of telephone conference. The Tenant, Susanna Buote, and the Sub-Tenants, Nwafar Vitus Ifeanyichukwu and Kelly Oghenekaro Atietie attended the telephone hearing.

C. DISPOSITION

10. The appeal is allowed. The Sub-Tenants shall each pay to the Tenant the amount of \$888.00.

D. SUMMARY OF EVIDENCE

11. The Tenant's evidence is that she rented the three-bedroom Rental Unit from the Landlord for \$780/month. She testified that her tenancy agreement with the Landlord did not include furniture, electricity or internet. She also had to provide her own appliances, which included a fridge, stove, washer and dryer. This will be described as the "Tenancy Agreement" throughout this Order.
12. The Tenant testified that she advertised the two unused bedrooms in the Rental Unit on Facebook as fully furnished units and that they included "room and board". She testified that the Sub-Tenants decided to share a room and each agreed to pay \$600.00 monthly. The Tenant testified that she provided "everything" to the Sub-Tenants. She testified that she provided electricity, internet, furniture for the room, linens, pillows, and toilet paper, for example. She said she also supplied some groceries and meal preparation for the Sub-Tenants, and testified that that she did their laundry at least three times a week. This will be described as the "Subletting Agreement" throughout this Order.
13. The Tenant's documentary evidence included electricity and internet bills for April through July 2024. She also testified that she sublet the third bedroom in the Rental Unit to another individual.
14. The Sub-Tenants testified that they moved into the Rental Unit on April 20, 2024, and that the Tenant moved out on August 21, 2024. E-transfer receipts indicate the Sub-Tenants collectively paid \$1,200 in April, \$1,200 in May, and then \$312 in each of June and July, for a total of \$3,024 during their subtenancy. The Sub-Tenants agreed that the Tenant did laundry for them, provided them with furniture for their bedroom, and they used her internet and electricity, as well as kitchen appliances and common area furniture. They testified that the Tenant offered them groceries but they often got their own groceries. The Sub-Tenants testified that they used the furniture and appliances which were provided in the Rental Unit.

E. ANALYSIS

15. In Order LD24-272, the Residential Tenancy Officer found that the evidence did not establish an agreement between the parties for a fair and equitable splitting of the additional services and facilities supplied by the Tenant. The Officer found that the lawful rent that could be collected by the Tenant was limited to a portion of the rent under the Tenancy Agreement, per subsection 30(8) of the *Residential Tenancy Act*. The Officer declined to provide a credit or adjustment to the Tenant regarding the additional services and facilities provided.
16. The Tenant's Notice of Appeal states:

"I feel they owe me, not that I owe them."
17. Order LD24-272 did not expressly deal with the Tenant's application seeking rent owing, finding instead that the Tenant owed the Sub-Tenants a return of rent. However, the Commission has interpreted the Tenant's Notice of Appeal to be a request to consider whether she is owed rent from the Sub-Tenants. That said, the Tenant confirmed at the

hearing that she has moved out of the Rental Unit and is not appealing the finding with respect to her applications seeking termination of the subtenancies.

18. An appeal to the Commission, per subsection 89(8), is heard by way of a re-hearing, and the Commission has the discretion to receive and accept new evidence and information, and to make any decision or order that the Director is authorized to make. The statutory requirement for a re-hearing requires that the Commission make its own decision based on the entire record.¹
19. Upon the Commission's review of the entire record and hearing the testimony of the parties, the Commission the Commission ultimately comes to a different decision than the Rental Office.
20. As a starting point, where subletting occurs, subsection 30(6) of the *Residential Tenancy Act* contemplates two different relationships and agreements:

(6) *Where a tenant has sublet a rental unit to another person*

(i) *the tenant remains entitled to the benefits and is liable to the landlord for the breaches of the tenant's obligations under the **tenancy agreement** or this Act during the subtenancy; and*

(ii) *the subtenant is entitled to the benefits and is liable to the tenant for the breaches of the subtenant's obligations under the **subletting agreement** or this Act during the subtenancy.*

[emphasis added]

21. As can be seen, subsection 30(6) creates two separate agreements in the case of a sublet: (1) the tenancy agreement between the landlord and tenant and (2) the subletting agreement between the tenant and subtenant(s). Therefore, when a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant(s) enter into a new subletting agreement. While the Act includes a definition of tenancy agreement, it does not define subletting agreement. In such a case, it is left to the Commission to interpret what is meant by "subletting agreement", and in our opinion, the subletting agreement may provide additional services to a subtenant that are not included in the tenancy agreement.
22. The *Residential Tenancy Act* also expressly contemplates that a tenant may sublet only a portion of a rental unit. This is made clear by clause 30(8)(b), which speaks to a situation where a tenant and subtenant both occupy the rental unit. That clause provides that the tenant shall not charge the subtenant more rent "than the amount represented by the rent payable under the *tenancy agreement*..." [emphasis added].
23. Clause 30(8)(b) reads in full:

(8) *A tenant*

¹ *Perry v. Kings Square Affordable Housing*, 2023 PESC 32, at para 22.

- (a) shall not charge a subtenant more rent than is payable under the **tenancy agreement**; and
- (b) where the tenant and the subtenant occupy the rental unit, shall not charge the subtenant more rent than the amount represented by the rent payable under the **tenancy agreement**, either.
 - (i) divided by the number of tenants during the subtenancy, or
 - (ii) apportioned among the tenants in a manner agreed to by them.

[emphasis added]

- 24. In cases where the original tenant continues to occupy the rental unit with the subtenant(s), the original tenant is not considered a “landlord” of the subtenant per the definition in the *Residential Tenancy Act* because the definition of “landlord”, found at subsection 1(h), expressly excludes “a tenant occupying the rental unit”.
- 25. In this case, the Tenancy Agreement between the Landlord and Tenant charged rent of \$780/month for an unfurnished unit, with no appliances, excluding electricity and internet.
- 26. However, the Tenant provided additional services to the Sub-Tenants which were not provided to her by the Landlord under the Tenancy Agreement. The Sub-Tenants sublet a fully furnished unit, including appliances, electricity and internet. The Tenant also provided some other amenities to the Sub-Tenants, including laundry and cooking services (collectively referred to as “Additional Services”). The Subletting Agreement, therefore, included these Additional Services above and beyond what was included in the Tenancy Agreement. These services are all contemplated by the *Residential Tenancy Act* in the definition of “service or facility” at clauses 1(s)(i), (ii), (iii) and (xiv).
- 27. Generally speaking, the Commission is of the opinion that it is reasonable to expect that a tenant could recover at least a portion of utility expenses and other costs paid outside of the Tenancy Agreement, as a consequence of subletting a rental unit.
- 28. In coming to this opinion, we have considered that the *Act* only limits how much rent a tenant can recover from a subtenant to a portion of what is owed under the Tenancy Agreement. The *Act* is silent with respect to whether a tenant can seek compensation from a subtenant for additional services, utilities or other amenities provided in the Subletting Agreement *outside the Tenancy Agreement*. As stated, in the Commission’s opinion, such compensation is reasonable.
- 29. In this case, the Commission is satisfied that the Additional Services were provided to the Sub-Tenants as part of the Subletting Agreement. The testimony of the parties confirmed this. The Tenant testified that this was included in her advertisement. She considered the Additional Services to be “room and board”. The Tenant incurred additional expense to provide furniture, appliances, electricity and internet services, for example, and the Sub-Tenants had the benefit and use of these Additional Services during the subtenancy.
- 30. Based on a review of the evidence, the Subletting Agreement charged \$600/month for each Sub-Tenant and passed on to each of them: one quarter of the rent under the

Tenancy Agreement, as well as an amount to compensate the Tenant for electricity, internet, furniture, appliances, laundry and cooking services, and the various other conveniences supplied to the Sub-Tenants during the subtenancy.

31. For example, the Tenant paid the Landlord \$780/month for the unfurnished unit, excluding electricity and internet. Therefore, on a strict application of subsection 30(8), she could charge the Sub-Tenants \$195/month for “rent” for an unfurnished unit, excluding electricity and internet.²
32. With respect to utilities, the Tenant’s documentary evidence demonstrates she paid, on average, \$220.38/month for electricity during the subtenancy. Her internet bill was an average of \$159.15/month during that same period. Apportioned among the four occupants of the Rental Unit, this equals \$94.88/month each.
33. The Tenant further supplied furniture, appliances, laundry and cooking services, and various other amenities and conveniences.
34. The Commission is not in a position to undertake a detailed review of all of the Additional Services to quantify their value, but the evidence satisfies us that the Subletting Agreement was more comprehensive than the Tenant’s Tenancy Agreement with her Landlord. Accordingly, we will allow the Tenant’s appeal.
35. In making this award, we find that the period of subtenancy was four months, from April 20 to August 21, 2024. The Sub-Tenants’ evidence is that they collectively paid \$3,024 during the period of their subtenancy: \$600 each in April and May, and \$156 each in June and July. Therefore, we find that they each owe the Tenant \$888 to compensate her for the full Subletting Agreement in June and July 2024.
36. In making this Order, we wish to highlight that this is a very unique fact scenario that seems to fall into a gap created by the *Residential Tenancy Act* in situations where subtenants enjoy more services and benefits during the subtenancy and under the Subletting Agreement than are provided for in the Tenancy Agreement between the tenant and landlord. The Commission encourages tenants and subtenants to record Subletting Agreements in writing in clear terms.

F. CONCLUSION

37. The appeal is allowed. The Sub-Tenants shall each pay to the Tenant the amount of \$888.00.

² \$780/4 tenants during the subtenancy = \$195.

IT IS ORDERED THAT

1. The appeal is allowed.
2. The Sub-Tenant Nwafar Vitus Ifeanyichukwu shall pay to the Tenant the amount of \$888.00 on or before January 3, 2025.
3. The Sub-Tenant Kelly Oghenekaro Atietie shall pay to the Tenant the amount of \$888.00 on or before January 3, 2025.

DATED at Charlottetown, Prince Edward Island, 17th day of December, 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.