



Date Issued: January 2, 2025
Dockets: LR24068
Type: Rental Appeal

INDEXED AS: Nadine Anstey v. William Wellner and PEI Housing Corporation
Order No: LR25-01

BETWEEN:

Nadine Anstey (the "Subtenant")

Appellant

AND:

William Wellner (the "Landlord")

Respondent

AND:

PEI Housing Corporation (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 22, 2024, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in not finding that the Subtenant is entitled to a return of rent and return of the security deposit.

B. BACKGROUND

2. This appeal concerns a rental unit located at 32 Newland Crescent, Charlottetown, PEI (the "Rental Unit") where the Subtenant has resided since November 1, 2015.
3. On August 1, 2024, the Landlord served an *Eviction Notice (Form 4(A))* to the Tenant and Subtenant. The Eviction Notice was served for the following reasons:

You have permitted an unreasonable number of occupants in the rental unit; Animals;

You or someone you have allowed on the property has caused damage to the rental unit.

The particulars of termination state:

"Carpet is ruined due to excessive and unauthorized animals up to 5 cats and an unruly dog unit is a mess."

4. On August 8, 2024, the Subtenant filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Subtenant Application") with the Residential Tenancy Office disputing the Eviction Notice. The Subtenant Application also sought a return of rent due to an alleged unlawful rent increase and a return of the security deposit. The Subtenant Application requested:

\$6386.00 pay for \$62 month unlawful rent increase and \$1000 damage deposit for unlawful request

5. On August 20, 2024, the Tenant also filed a *Tenant Application to Determine Dispute (Form 2(A))* (the "Tenant Application") with the Rental Office disputing the Eviction Notice.
6. On September 3, 2024, the Rental Office held a teleconference hearing with the Subtenant, a Subtenant witness, the Landlord, and a Tenant representative.
7. The Rental Office issued Order LD24-292 on September 11, 2024, with an Erratum to Order on September 17, 2024 (LD24-292A). The Rental Office ordered that the tenancy agreement between the parties shall continue in full force and effect, and denied the Subtenant Application for a return of rent and a return of the security deposit.
8. The Subtenant appealed Order LD24-292 on September 17, 2024. The Landlord did not appeal the Order.

9. The Commission heard the appeal on October 22, 2024, by way of telephone conference. The Subtenant attended on her own behalf, the Landlord attended on his own behalf and Lori Johnston attended on behalf of the Tenant, PEI Housing Corporation. Roy Peddle attended as a witness for the Subtenant.

C. DISPOSITION

10. The appeal is dismissed and Order LD24-292A is confirmed.

D. SUMMARY OF EVIDENCE

11. The documentary evidence includes a written tenancy agreement between the Landlord and Subtenant, dated September 25, 2021, which states that monthly rent was \$1,000/month, including heat. There is a handwritten notation on the agreement that shows "938 + 62". The agreement also included a \$1,000 security deposit, which it appears the Subtenant paid to the Landlord on September 29, 2015.
12. The evidence also includes a written month-to-month tenancy agreement for the Rental Unit between the Landlord and PEI Housing Corporation (the Tenant) dated September 25, 2015. The terms of that agreement included rent of \$938.00 per month and no security deposit was required.
13. The Subtenant testified that in 2015 she found the Landlord's listing on Kijiji for the Rental Unit advertised for \$1,000/month. She testified that PEI Housing Corporation agreed to cover \$938/month for rent and would not pay the security deposit. The Subtenant testified that she then had no choice but to agree to the additional \$62/month and \$1,000 security deposit.
14. The Subtenant's position is that the Landlord's collection of the extra \$62/month and \$1,000 security deposit from her was contrary to the terms of the tenancy agreement with the Tenant, and constituted an illegal rent increase.
15. The Landlord testified that he advertised the Rental Unit for \$1,000/month, including a \$1,000 security deposit, and that the Subtenant agreed to these terms. He testified that it was later that he received an agreement in the mail from PEI Housing Corporation with an amount of \$938/month. He agreed that he signed that tenancy agreement. The Landlord testified that he never told the Subtenant that he would accept only \$938.00 per month for rent and nobody ever asked him to reduce the rent to that figure.
16. Ms. Johnston, on behalf of the Tenant, stated that she was not involved in signing the paperwork between the Landlord and the Tenant. She testified that the Tenant has provided rent supplements in the past and that their policy is not to pay a security deposit.

E. ANALYSIS

17. The Subtenant is seeking the return of an alleged unlawful rent increase and unlawfully collected security deposit from the Landlord. For the reasons that follow, the Commission denies the Subtenant's appeal.
18. The evidence of both the Landlord and the Subtenant is consistent that the Landlord advertised the Rental Unit for \$1,000/month. The Commission is satisfied that the Subtenant's arrangement with the Tenant (PEI Housing Corporation) was such that they would pay up to \$938/month for rent and Subtenant agreed to cover the remaining \$62/month. The Subtenant also paid the security deposit required by the Landlord, because it was the Tenant's policy not to pay the security deposit.
19. This arrangement between the parties was papered in a somewhat unusual way; however, the Commission is satisfied that the evidence demonstrates the Landlord always intended to rent the Rental Unit for \$1,000/month. The fact that the Tenant and Subtenant cost-shared that amount monthly does not result in an unlawful increase.
20. In effect, the Tenant provided the Subtenant with a monthly rental supplement of \$938.00 for an apartment which was advertised at \$1,000.00 per month. The cost-sharing arrangement between the Tenant and Subtenant does not constitute an unlawful rental increase because the total rent was always \$1,000.00. While it may be unusual to be collecting rent pursuant to two different agreements, there is no evidence that the Landlord agreed to lower his asking rent or waive the security deposit. The Landlord was not required to reduce rent or waive the security deposit just because there was a limit to the amounts that would be contributed by the Tenant. The Commission agrees with all of the findings in Order LD24-292A.

F. CONCLUSION

21. The appeal is dismissed and Order LD24-292A is confirmed.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-292A is confirmed.**

DATED at Charlottetown, Prince Edward Island, 2nd day of January, 2025.

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.