



Date Issued: January 2, 2025
Dockets: LR24084
Type: Rental Appeal

INDEXED AS: Jacob Sullivan v. Winston Cousins
Order No: LR25-04

BETWEEN:

Jacob Sullivan (the "Tenant")

Appellant

AND:

Winston Cousins (the "Landlord")

Respondent

ORDER

Panel Members:

M. Douglas Clow, Acting Chair
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 December 10, 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 November 18, 2024. The Tenant and all occupants must vacate the Unit by this time and date.

B. BACKGROUND

2. This appeal concerns a rental unit located at 12280 Route 6, Margate, PEI (the “Rental Unit”). The Tenant entered into a written, fixed-term tenancy for the period of July 5, 2018 to July 1, 2019. The tenancy continued as a month-to-month agreement. Rent is \$875.00 due on the first day of each month. The Tenant paid a security deposit of \$725.00 at the beginning of the tenancy.
3. On August 20, 2024, the Landlord served the Tenant with a *Form 4 (A) Eviction Notice* (the “Notice”) for non-payment of rent in the amount of \$1,870.00 and for repeatedly late rent payments. The effective date in the Notice was August 30, 2024.
4. The effective date was automatically changed to September 9, 2024, pursuant to section 54 of the *Residential Tenancy Act* (the “Act”) because the Landlord was required to provide the Tenant with a minimum of twenty-days’ notice (see subsection 60(1)).
5. On September 23, 2024, the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Application”) with the Residential Tenancy Office (the “Rental Office”). The Application seeks an Order for vacant possession of the Rental Unit and for the Sheriff to put the Landlord in possession, which is the subject of this Order.
6. On October 11, 2024, the Landlord filed a second *Form 2 (B) Landlord Application to Determine Dispute* with the Rental Office. The second application seeks a monetary order for rent owing, which is the subject of Order LD24-376.
7. On November 5, 2024, the Landlord participated in a teleconference hearing. The Tenant did not participate in the teleconference hearing.
8. The Residential Tenancy Office issued Order LR24-375 on November 7, 2024, which ordered that the tenancy between the parties shall terminate effective 5:00 pm on November 18, 2024. The Tenant and all occupants must vacate the Unit by this time and date.
9. The Tenant appealed Order LD24-375 on November 22, 2024.
10. The Commission heard the appeal on December 10, 2024, by way of telephone conference. The Tenant, Jacob Sullivan, attended the hearing. The Landlord, Winston Cousins, attended the hearing. Danielle Adams attended as a witness for the Tenant. Linda Cousins attended as a witness for the Landlord.

C. DISPOSITION

11. The appeal is dismissed and Order LD24-375 is confirmed.

D. ISSUE

12. Is the Tenant required to vacate the Rental Unit?

E. SUMMARY OF EVIDENCE

13. The Tenant testified that he did not pay any rent in October 2024. He testified that the Landlord accepted \$1,050.00 at the beginning of November. The Tenant stated that the Landlord then shook his hand and said he would not evict the Tenant. The Tenant claimed that he got the handshake and statement "on camera". Upon questioning from the Commission panel, he acknowledged that he has not, to date, paid any rent for December 2024.

14. Ms. Adams testified that until early 2024 she shared the Rental Unit with the Tenant. She submitted that the Landlord's various tenants used to pay their rent by e-transfer. The Landlord then claimed he had not received payment and the tenants had to start paying cash. She testified that the Landlord never issued receipts.

15. The Landlord testified that the Tenant had received his eviction notice on August 20, 2024 for non-payment of rent and repeatedly late rent payments. He testified that he did accept the \$1,050.00 paid in November; however, he did not abandon the claim. He denied shaking the Tenant's hand and denied saying anything to suggest he would no longer enforce the eviction notice. He stated that as of the beginning of October 2024 the Tenant owed him \$2,285.00. He stated that as of November 30, 2024 the Tenant owed him \$2,985.00 and owed him \$3,265.00 as of the December 10, 2024 hearing day (based on an apportionment of rent at \$28.00 per day).

F. ANALYSIS

16. The Commission finds that the onus rests on the Landlord to support his claim for unpaid rent. The Commission finds that the Landlord has satisfied this onus and has established that the Tenant is in arrears of rent. Other than his testimony, which was countered by the Landlord's testimony, the Tenant has not provided evidence to support his contention that the Landlord had abandoned his claim for unpaid rent.

17. Exhibit E-8 is the Form 4(A) Eviction Notice that commenced the Landlord's claim for unpaid rent. This Form 4(A) is dated August 20, 2024. Exhibit E-9 is a ledger showing arrears of \$1,870.00 as of September 2024. Exhibit E-14 is a ledger showing arrears of \$2,285.00 as of October 2024. The Landlord testified that the arrears grew to \$2,285.00 in October and \$2,985.00 as of the end of November. He testified that the arrears were \$3,265.00 as of the hearing day and would continue to increase at the rate of \$28.00 per day until the Tenant vacated the Rental Unit. The Commission notes that any future determination of updated arrears will have to take into account any payments toward rent made by the Tenant.

18. The Commission agrees with Order LD24-375 which found that rent was owing and that the Tenant was repeatedly late in paying rent. Accordingly, the tenancy is terminated and the Tenant and all occupants must leave the Rental Unit.
19. The Commission finds that the tenancy between the parties shall terminate effective 5:00 p.m. on January 20, 2025. The Tenant and all occupants must vacate the Rental Unit by this date and time.
20. The Commission notes that a separate Order of the Rental Office, Order LD24-376, which established the rental arrears as \$2,635.00 based on a November 18, 2024 termination date, was not appealed by the Tenant. Accordingly, as that Order was not appealed, the findings in Order LD24-376 remain in effect. Once the Tenant has vacated the Rental Unit, the Landlord will need to apply to the Rental Office for an updated determination of the rental arrears.

G. CONCLUSION

21. The appeal is dismissed and Order LD24-375 is confirmed, subject to a revised termination date.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Order LD24-375 is confirmed.**
3. **The tenancy between the parties shall terminate on January 20, 2025 at 5:00 p.m. The Tenant and all occupants must vacate the Rental Unit by this date and time.**

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

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(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.