



Correction: March 10, 2025
Date Issued: March 3, 2025
Dockets: LR24077
Type: Rental Appeal

INDEXED AS: Hanan Mresh and Bassem Alataalah v. Stacey Ponzo and Nathaniel Ponzo
Order No: LR25-11

BETWEEN:

Hanan Mresh and Bassem Alataalah

Appellants

AND:

Stacey Ponzo and Nathaniel Ponzo

Respondents

ORDER

Panel Members:

Kerri Carpenter, Acting Chair
M. Douglas Clow, Acting Vice Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

A. INTRODUCTION

1. In this appeal, which was heard by the Commission on November 27, 2024, the issue is whether the Landlord must return the sum of \$3,000, or a portion thereof, for rent paid by the Tenants for the month of July 2024.

B. BACKGROUND

2. This appeal concerns a rental unit located at 74 Glenthorn Avenue, Charlottetown, PEI (the "Rental Unit"). On June 14, 2024 the parties entered into written, fixed-term tenancy agreement for the period of July 2, 2024 to June 30, 2025 (the "Tenancy Agreement"). Rent was \$3,000.00 due on the first day of each month. The Tenants paid a security deposit of \$3,000.00.
3. On August 5, 2024 the Tenants filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "Application") with the Residential Tenancy Office (the "RTO"). Pursuant to the Application, the Tenants sought a return of rent paid in the amount of \$3,000.00 for July 2024.
4. On August 28, 2024 the Tenants amended the Initial Application to include the name of Mr. Ponzo and to add the amount, \$3,000.00, that the Tenants were seeking. The application as amended shall hereinafter be referred to as the "Application")
5. On October 1, 2024 the Tenants and the Landlords participated in the hearing for determination of the Application.
6. On October 8, 2024, the RTO issued Order LD24-334 which ordered the Landlords to return the rent paid for July 2024, in the amount of \$3,000, to the Tenants by October 29, 2024.
7. The Landlords appealed Order LD24-334 on October 25, 2024.
8. The Commission heard the appeal on November 27, 2024, by way of telephone conference. The Landlords, Hanan Mresh and Bassem Alataalah, attended the hearing. The Tenants, Stacey Ponzo and Nathaniel Ponzo, attended the hearing.

C. DISPOSITION

9. The appeal is allowed and Order LD24-334 is reversed.

D. SUMMARY OF EVIDENCE

10. Pursuant to the Tenancy Agreement, monthly rent was \$3,000.00 due on the first day of the month. A \$3,000.00 security deposit was required, paid by the Tenant and returned by the Landlord to the Tenant after the end of the Tenancy.
11. The parties disputed the vacate date, however they agreed that the keys were turned over by the Tenant to the Landlord on the evening of July 23, 2024.

12. With respect to whether the Tenants owed rent for some or all of July 2024, evidence was provided by both parties with respect to the notice given by the Tenants of their intention to move out, communications between the parties regarding July 2024 rent, and also with respect to the Tenants actual move out date and the Landlord's regaining of possession of the Rental Unit.
13. The parties entered into the Tenancy Agreement on June 14, 2024. The tenancy agreement was for a fixed term of July 2, 2024 to June 30, 2025.
14. The Tenants moved into the Rental Unit on July 1, 2024. They then expressed concerns about the cleanliness of the unit and the presence of mold. The Landlords examined the mold and determined it was surface mold. The Tenants expressed concerns about the safety of the Rental Unit. The Tenants requested a termination of the tenancy agreement. The Landlords emailed the Tenants on July 9, 2024 reporting on an inspection of the Rental Unit and providing details for an early termination of the Tenancy Agreement. The Landlords proposed a move out date of July 13, 2024 and if that date was suitable they would fully refund the rent paid for July as well as the security deposit. The Landlords indicated that if the Tenants needed to stay longer rent would be charged. The Tenants replied requesting that they needed to stay until July 15 and also requested a cleaning crew to wash down the mold. The Landlord responded on July 10, 2024 that they would take possession of the Rental Unit on July 15 and would have a crew coming to address the issues.
15. The Landlords testified that the Rental Unit was inspected on July 15, 2024.. They hired two people they described as inspectors and did their best to remedy the alleged mold issue. They testified that they had an agreement with the Tenants to return the July rent if the Tenants moved out by July 13, 2024. That agreement was extended several times but the Tenants did not move out by the time the final extension expired, on the afternoon of July 23, 2024. The Landlords stated that they took a walk through of the Rental Unit on July 22, 2024 and all the Tenants furniture had been removed The Landlords clarified that they at no time refused to accept the keys; rather, the Tenants left the keys after the agreement deadline. The Landlords testified that they met with Mr. Ponzo on the afternoon of July 23, 2024. Mr. Ponzo again refused to give them the keys. The Landlords stated that they returned the security deposit to the Tenants. The Landlords stated that they did not have enough time to re-rent the Rental Unit for August 1, 2024. They testified that the Rental Unit was not re-rented until September 2024.
16. The Tenants testified that they had concerns about mold and reached an agreement with the Landlords to receive their security deposit back and also receive a return of the July rent. The Tenants submitted that they moved out between July 19 and July 21, 2024. On July 23, 2024, Mr. Ponzo declined to hand over the keys in the afternoon when he met with the Landlords. After the Landlords left, Mr. Ponzo called Ms. Ponzo at approximately 6:30 p.m.. Ms. Ponzo told him he should give back the keys. Mr. Ponzo then left the keys in the mailbox sometime between 6:30 and 8:00 p.m. on July 23, 2024.

E. ANALYSIS

17. Section 19 of the *Residential Tenancy Act*, cap. R-13.11 (the “Act”) requires a tenant to pay rent when it is due under the tenancy agreement. Subsection 55(3) of the Act sets out the requirements for ending a fixed term tenancy:

Notice for fixed-term tenancy

(3) A tenant may end a fixed-term tenancy by giving the landlord a notice of termination effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice;

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and

(c) is the day before the day that rent is payable under the tenancy agreement.

18. The Commission has reviewed the documentation on file and the testimony of the parties. Notwithstanding the notice requirements of subsection 55(3) of the Act, an agreement had been reached whereby the Tenants would move out by July 13, 2024 and the Landlords would return the security deposit and July’s rent. This agreement was extended several times at the request of the Tenants, with the latest extension being the afternoon of July 23, 2024. Although the Tenants had removed all their possessions by July 22, 2024, they had not returned the keys until the evening of July 23, 2024 between 6:30 and 8:00 p.m.
19. The Commission finds that by agreeing to a full return of all moneys paid and agreeing to several extensions, the Landlords were very accommodating to the Tenants. The Tenants could have returned the keys at any time between when they were fully moved out to the afternoon of July 23, 2024, the latter being the final deadline. They did not, returning the keys the evening of July 23, 2024, instead.
20. The Commission finds that the Tenants, by their failure to return the keys by the afternoon of July 23, 2024, broke the agreement, as the Landlords left the Rental Unit that afternoon without the keys. Without the keys, the Landlords did not regain possession of the Rental Unit until after the agreed deadline. While the difference between the afternoon and evening of July 23, 2024 may amount to only a matter of a few hours, the undisputed evidence is that the Landlord did not extend the timeline for returning possession to the Landlord beyond his visit to the premises on the afternoon of July 23, 2024 and the Tenants refused to provide him with the keys at the end of that visit.
21. The Commission finds that the Landlords are entitled to keep the July rent on a pro-rated basis. The Commission calculates pro-rated rent for the month of July 2024 as follows:
- $$\$3000.00 \times 23 / 31 = \$2,225.81$$
22. The Landlords are hereby ordered to return the balance of rent of \$774.19 to the Tenants.

F. CONCLUSION


23. The appeal is allowed and Order LD24-334 is reversed. The Landlords are required to return the sum of \$774.19 representing the portion of the month of July 2024 that the Landlords had full possession of the Rental Unit.

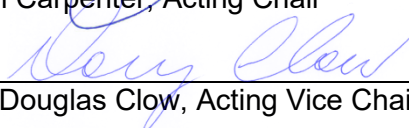
IT IS ORDERED THAT

- 1. The appeal is allowed.
- 2. Order LD24-334 is reversed.
- 3. The Landlords shall return the sum of \$774.19 to the Tenants not later than ~~January 15, 2025~~ March 18, 2025.

DATED at Charlottetown, Prince Edward Island, 3rd day of March, 2025.

BY THE COMMISSION:



 Kerri Carpenter, Acting Chair


 M. Douglas Clow, Acting Vice Chair

CORRECTION DATED at Charlottetown, Prince Edward Island, 10th day of March, 2025.

BY THE COMMISSION:

 Kerri Carpenter, Acting Chair

 M. Douglas Clow, Acting Vice 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.