PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: **March 27, 2025**
Dockets: **LR24090**
Type: **Rental Appeal**

INDEXED AS: Ozgur Noyan Aydin v. Rana Malakie

Order No: LR25-14

BETWEEN:

Ozgur Noyan Aydin (the "Tenant")

Appellant

AND:

Rana Malakie (the "Landlord")

Respondent

ORDER

Panel Members:

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

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Philip J. Rafuse,
Appeals Administrator
Island Regulatory & Appeals Commission

A. INTRODUCTION

1. This appeal was heard by the Commission on March 14, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the "Rental Office") erred in finding that the Tenant has not established an unlawful rent increase.

B. BACKGROUND

2. This appeal concerns a rental unit located at 598 Queen Street, Charlottetown (the "Rental Unit"). The Unit is one-half of a duplex owned by the Landlord. On July 24, 2023, the parties entered into a written, fixed-term tenancy agreement for the period of August 15, 2023, to July 31, 2024. The Tenant paid a $2,000.00 security deposit at the beginning of the tenancy. Rent was set at $2,350.00 and was due on the first day of the month.

3. The Tenant moved out of the Unit on March 31, 2024, and the tenancy ended by mutual agreement.

4. On July 8, 2024, the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the "First Application") with the Residential Tenancy Office (the "Rental Office"). The First Application seeks a return of rent due to an unlawful rent increase. However, no dollar amount was listed on the First Application.

5. On October 10, 2024, the Tenant filed an amended *Form 2 (A) Tenant Application to Determine Dispute* with the Rental Office (the "Second Application"). The Second Application sought a return of rent of $1,762.50 due to an unlawful rent increase. A copy was provided to the Landlord on the same date.

6. On December 10, 2024, the Tenant, the Landlord, the Landlord's translator, and a Landlord witness participated in a teleconference hearing before the Rental Office to determine the Second Application.

7. On December 30, 2024, the Residential Tenancy Office issued Order LD24-438, which denied the Tenant's Second Application.

8. On December 31, 2024, the Tenant appealed Order LD24-438.

9. The Tenant's appeal was first scheduled for hearing by the Commission on January 28, 2025. On morning of scheduled hearing, the Landlord advised Commission Staff that they would not be attending the scheduled hearing. The Commission was of the opinion that information and evidence was required from the Landlord to fairly adjudicate this appeal, and therefore, the Commission adjourned the hearing and issued a Preliminary Order, being Order LR2-05, which required the Landlord to answer certain questions and provide certain evidence to the Commission.

10. The appeal was rescheduled to be heard on March 14, 2025, by way of telephone conference. The Tenant attended, and the Landlord, along with her son Bassel Malke, attended the tele-hearing.

11. Following the hearing of the appeal, the Commission identified a question in its post-hearing deliberations that was not addressed by the parties at the hearing. The issue was

in respect of a jurisdictional issue raised by the parties at the Rental Office hearing and addressed in paragraphs 13, 14 and 18 of Order LD24-438.

12. Therefore, on March 24, 2025, Commission Staff emailed the parties asking them to make submissions on whether the Tenant had served the Landlord with the First Application and, if so, when service was effected. Both parties responded with their submissions on March 24, 2025.

C. DISPOSITION

13. The appeal is dismissed.

14. The Commission's disposition in this matter is not with respect to the merits. Instead, the Commission finds that the Tenant failed to serve the Landlord with his application (1) within five days of making the application, as required by subsection 76(2) of the *Residential Tenancy Act* and (2) before the expiry of the six-month statutory limitation period set out in section 75 of the *Act*. Therefore, the Commission is without jurisdiction to make a finding on the merits of the Tenant's application.

D. ANALYSIS

15. The evidence of the parties is consistent that the tenancy between the parties ended on March 31, 2024.

16. Section 75 of the *Residential Tenancy Act* permits a party to make application to the Rental Office within six months after the termination of a tenancy. In this case, six months from the end of the tenancy was October 1, 2024.[1]

17. The Tenant first filed an application seeking a return of rent due to an unlawful increase on July 8, 2024. This was the First Application. This was well within the six-month statutory limitation period. However, the submissions and evidence of both parties indicates that the Tenant did not serve the Landlord with the First Application.

18. The Tenant amended the First Application to add certainty to the amount being claimed on October 10, 2024. This was the Second Application and was amended outside the six-month limitation period. The evidence of both parties is that the Second Application was served on the Landlord the same day, October 10, 2024.

19. Order LD24-438 addresses this irregularity as follows:

> [13] The Tenant stated he had initially filed the First Application with the Rental Office for a return of rent on July 8, 2024. **The Tenant stated that he had not served the Landlord with a copy of the First Application, as he did not know how much rent to ask to be returned**. The Tenant stated that he filed the current Application on October 10, 2024, and

[1] Six months from March 31st is September 30th, which is a holiday. A time limit for the doing of anything that falls or expires on a holiday is extended to include the next day that is not a holiday. See: *Interpretation Act,* RSPEI 1988, I-8.1, ss. 36(6) and 36(8).

> acknowledged that it was past the six-month deadline, as the tenancy ended on March 31, 2024.
>
> [14] The Landlord agreed that the tenancy ended by mutual agreement on March 31, 2024. **The Landlord stated they had not received a copy of the Tenant's First Application. The Landlord argued the Application should not be allowed because the Tenant filed outside of the six-month deadline.**
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> […]
>
> [18] The Tenant filed the First Application on July 8, 2024, and the Second Application on October 10, 2024, collectively the "Application." The Tenant filed the Second Application as an amendment to replace the First Application. **As the First Application was filed within six months after the end of the tenancy agreement, I find that the Application was filed in accordance with the timeline specified in the Act.**

20. The Commission agrees, generally, with the premise of the Rental Officer's conclusion that an application that later is amended to add clarity will not, in every case, necessarily bring that application outside the statutory limitation period. However, unfortunately in this case, Order LD24-438 fails to consider or address the lack of service on the Landlord of the First Application in the first place.

21. Subsection 76(2) of the *Residential Tenancy Act* requires that a person who makes an application to the Director "shall give a copy of the application to the other party … within five days of making the application." The Commission has previously commented on a party's failure to serve their application on the other party within the timeline prescribed by subsection 76(2). In Order LR24-32, the Commission found that the lack of compliance with subsection 76(2) was fatal to the party's application.[2]

22. In this case, the Tenant concedes that he did not give the Landlord a copy of the First Application. He concedes that the Landlord only received a copy of the Second Application on October 10, 2024.

23. If we are to accept that the First Application was filed before the expiry of the limitation period and the Second Application merely amended it, thereby preserving the limitation period, the Tenant would have needed to serve the Landlord with the First Application within five days of July 8, 2024. Neither party disputes that this did not happen.

24. In the opinion of the Commission, the fact that the Second Application was only an amendment of the First Application cannot save the failure of the Tenant to serve the Landlord with the First Application per subsection 76(2). This is because the Second Application was amended *after* the expiry of the statutory limitation period. As a result, the Tenant did not perfect his application with service on the Landlord until nine days after the limitation period expired.

25. For this reason, the Commission must dismiss the Tenant's appeal.

[2] Order LR24-32, *Veronica Sohasky and Justin Maxwell v. Vicki Craig and Greg Arthur*

26. As a final comment, because this appeal was dismissed on the basis of a procedural error, the Order makes no disposition or findings with respect to the merits of the Tenant's claims regarding an illegal rent increase. However, we nevertheless note that the Tenant has raised some compelling arguments with respect to the burden placed on him in Order LD24-438 to prove his claim of an illegal rent increase. We accept that, generally speaking, a tenant is not in a position to have a right of access to the information that may be required to prove a claim for illegal rent increase. For example, a previous tenancy agreement or a Landlord's bank statements. In a future case where a panel is able to consider the merits of a tenant's claims, it may well be that such arguments with respect to the burden of proof would be considered. However, in this particular case, because the Tenant has missed the deadline for service, the Panel makes no such findings.

IT IS ORDERED THAT

1. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, ___ day of _____, 2025.

BY THE COMMISSION:

(sgd.) *Kerri Carpenter*

Kerri Carpenter, Acting Chair

(sgd.) *M. Douglas Clow*

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.