



Date Issued: June 24, 2025
Dockets: LR25006
Type: Rental Appeal

INDEXED AS: Qinjuan Gu v. Feng Gao
2025 PEIRAC 26 (CanLII)
Order No: LR25-24

BETWEEN:

Qinjuan Gu (the "Tenant")

Appellant

AND:

Feng Gao (the "Landlord")

Respondent

ORDER

Panel Members:

Kerri Carpenter, Vice 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 March 11, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Tenant must pay the Landlord \$5,926.00 for unpaid rent.

B. BACKGROUND

2. This appeal concerns a house (Residential Property) located at 42 Cortland Street, Charlottetown, PEI. This Residential Property is a five-bedroom and three-bathroom single-family dwelling owned by the Landlord since December of 2022.
3. On or about December 25, 2023, the parties entered into a fixed-term tenancy agreement for the period of February 1, 2024 to June 30, 2025. Rent was \$2,500.00 due on the first day of the month and no security deposit was required. There are several versions of the tenancy agreement which have been produced in evidence. The various versions will be discussed further herein.
4. The space rented in the Residential Property is in dispute. The Tenant maintains that the Rental Unit is the complete Residential Property. The Landlord maintains that the Rental Unit is only a portion of the Residential Property. The documentary evidence is somewhat inconsistent in this regard.
5. On or about December 25, 2023, the parties also entered into a written supplemental agreement, which was written in Mandarin (the “Supplemental Agreement”). The translation of this supplemental agreement is also in dispute.
6. On September 30, 2024, the Tenant vacated the Residential Property and the tenancy ended.
7. On October 8, 2024 the Tenant filed a *Form 2 (A) Tenant Application to Determine Dispute* (the “Tenant’s Application”) with the Residential Tenancy Office (the “Rental Office”). The Tenant’s Application sought compensation and a return of rent for the Landlord’s alleged breach of the tenancy agreement. The Tenant claimed compensation of \$9,041.00 for return of rent and moving expenses.
8. On October 28, 2024 the Landlord filed a *Form 2 (B) Landlord Application to Determine Dispute* (the “Landlord’s Application”) with the Rental Office. The Landlord’s application sought compensation from the Tenant of \$5,926.00 for unpaid rent for March through September 2024.
9. The Rental Office held a hearing on December 17, 2024, The Landlord, the Landlord’s translator, the Tenant and the Tenant’s translator participated in the hearing.
10. On January 13, 2025, the Rental Office issued Order LD25-009, which ordered the Tenant to pay the Landlord \$5,926.00 by March 13, 2025.
11. The Tenant appealed Order LD25-009 on February 3, 2025.
12. The Commission heard the Tenant’s appeal on March 11, 2025, by way of telephone conference. Both the Landlord and the Tenant appeared at the telephone hearing. Present

with the Landlord was Mia Zaheng, who assisted him with translation. Present with the Tenant was her daughter Sijia (Jayden) Gu who represented the Tenant, assisted with translation and testified (the “Tenant’s Daughter”). The Tenant’s other daughter Veronica Li was also present on the call.

13. At the conclusion of the telephone conference hearing, the Commission invited both parties to provide submissions and closing statements in writing. Each party provided multiple post-hearing submissions as well as closing submissions.

C. DISPOSITION

14. The Commission allows the Tenant’s appeal in part. The Commission finds that the Tenant does not owe any money to the Landlord for unpaid rent as was ordered in Order LD25-009. However, the Commission denies the Tenant’s appeal in respect of her claim against the Landlord for a return of rent and moving expenses.

D. ISSUES

15. The issues for the Commission to consider in this appeal are whether the Rental Office erred in Order LD25-009 in awarding the Landlord compensation for the Tenant’s unpaid rent. The Commission must also consider whether the Tenant has proven the alleged breach by the Landlord of the tenancy agreement such that the Tenant should be awarded compensation and a return of rent.

E. SUMMARY OF EVIDENCE

16. The Tenant testified before the Commission that the tenancy agreement (Exhibit E-7) was the first document signed on December 25, 2023 (this version of the tenancy agreement will be discussed further below at paragraph 26). She testified that after signing that agreement, she took a brief break and shortly afterwards the Supplemental Agreement was also signed. The Tenant submits that the Supplemental Agreement was signed under false pretenses and specified three rooms while the tenancy agreement referenced a single-family home. The Tenant stated that there was no prior discussion that the lease was for shared occupancy.
17. The Tenant’s Daughter testified that her mother did not believe that the Supplemental Agreement was binding. She also testified that her mother believed she had rented the whole home and the tenancy agreement was altered or tampered with without her consent during her brief break. The alteration was the crossing out of the phrase “single family home”. The Tenant’s Daughter also testified that she and her sister understood that they were renting the whole house. As the Landlord’s family was present in the Rental Unit for much of the tenancy, the Tenant’s Daughter submits that the Tenant was within her right to withhold part of the rent. She did not feel it was reasonable for the Landlord to believe they only wanted to rent a portion of the house. She further submitted that the Tenant and her family moved out due to the Tenant’s “coercion”. She submitted that their right to quiet enjoyment was breached and they felt unsafe for a few reasons, including due to a lack of locks.
18. The Landlord stated that the tenancy agreement was not for a single-family house. He acknowledged signing page two of the tenancy agreement (see Exhibit E-7, page 48).

With respect to page one of the tenancy agreement (Exhibit E-7, page 47) the Landlord stated that he filled in his name near the top of the page. He denied crossing out the checkmark by “single family home” and denied making marks by “Room”. He stated that there were no witnesses to the signatures on page two. He stated that he never understood that the Tenant was seeking to rent the whole house.

19. The Commission also notes that the evidence includes several versions of a standard form tenancy agreement and one translation of the Supplemental Agreement. The Commission also obtained a translation of the Supplemental Agreement from the Immigrant & Refugee Services Association of Prince Edward Island. The various versions of these agreements will be discussed further below.

F. ANALYSIS

20. The applications before the Rental Office included both the Landlord’s Application seeking compensation for unpaid rent and the Tenant’s Application seeking compensation and return of rent for the Landlord’s alleged breach of the tenancy agreement.
21. Order LD25-009 denied the Tenant’s Application and allowed the Landlord’s Application.
22. The Landlord’s Application for unpaid rent was allowed on the basis of section 19 of the *Residential Tenancy Act*, which requires a tenant to pay rent when it is due, whether or not the landlord complies with the *Act* or the tenancy agreement. The Residential Tenancy Officer also found that the Landlord did not acquiesce to the Tenant’s non-payment of rent.
23. With respect to the Tenant’s Application, Order LD25-009 denied that claim on the basis that the Landlord had not misrepresented the tenancy to the Tenant and that the Landlord residing in the Residential Property during the tenancy did not devalue the amount of rent owing.
24. The appeal before the Commission is the Tenant’s appeal. That means the Commission must consider both: (1) whether the Rental Office erred in Order LD25-009 in awarding the Landlord compensation for the Tenant’s unpaid rent; and (2) whether the Tenant has proven the alleged breach by the Landlord of the tenancy agreement such that the Tenant should be awarded compensation and a return of rent.
25. In the Commission’s assessment, the primary issue in this appeal surrounds whether the parties agreed on the terms of the tenancy, particularly about whether the Tenant rented the entire Residential Property versus only three bedrooms plus use of kitchen, living room, other common areas and what rent was owing when the Landlord or his family occupied the Residential Property.
26. In this case, a tenancy agreement was signed by both parties, yet both parties, while appearing to be both sincere and credible, have a very different understanding of what was agreed to. The Commission has before it a variety of “agreements” between the parties: a draft tenancy agreement (Exhibit E-9); a signed tenancy agreement checking off “3 rooms” (Exhibit E-46); and a signed tenancy agreement with a scratched out checkmark by single family home, a checkmark by the word Room with the number “3” added before Room and an “s” added after the word Room, as well as what appear to be initials and the word “copy” at the top of page 1 (Exhibit E-7). The Commission also has

Exhibit E-11, yet another version of the tenancy agreement appearing to be the same as Exhibit E-7 but without the initials at the top of page one and without the word “copy” also at the top of that same page.

27. The Commission also has the Supplemental Agreement in several versions: Exhibit E-47 is in Mandarin, Exhibit E-48, submitted by the Landlord, is a version translated into English, and Exhibit C-3 is a version translated by a professional translation service hired by the Commission.
28. Needless to say, the documentary evidence before the Commission with respect to the tenancy agreement actually signed between the parties, and what terms they agreed to, is inconsistent.
29. The parties’ testimony and written submissions are similarly inconsistent.
30. From a review of her testimony and multiple post-hearing emails, it appears that the Tenant believed she was renting the entire five-bedroom three-bathroom house for \$2,500.00 per month. On the other hand, the Landlord believed it was understood that he was renting out only part of the home to the Tenant and her daughters, retaining the rest of the home for the use of him and his son on an as needed basis.
31. In an effort to clarify the intent of the parties, the Residential Tenancy Officer appeared to rely on the English translation of the Mandarin Supplemental Agreement (as provided by the Landlord) when trying to determine the intention of the parties. The Commission takes a different approach as outlined below.
32. Section 11 of the *Residential Tenancy Act* requires a landlord to prepare a written tenancy agreement and subsection 11(2) sets out the formal requirements for the tenancy agreement. Those requirements are not an exhaustive list.
33. In the Commission’s view, a tenancy agreement must also make clear what exactly is being rented. Indeed, the first provision of the Form 1 Standard Form of tenancy agreement attempts to fathom out such information, offering the following categories which may be checked off:
 - Apartment
 - Single Family Home
 - Portion of Duplex or Row Housing
 - Mobile Home
 - Room
 - Mobile Home Site
34. Accurately describing the category of rental unit in the tenancy agreement is important to ensure that there is a full meeting of the minds between a landlord and a tenant. Particularly where the landlord also intends to occupy a portion of the rental unit during the tenancy. Such shared possession ought to be very clearly set out so there is no misunderstandings.

35. As noted above at the beginning of this section, the Commission must consider two things on this appeal: (1) whether the Rental Office erred in Order LD25-009 in awarding the Landlord compensation for unpaid rent; and (2) whether the Tenant has proven the alleged breach by the Landlord of the tenancy agreement such that the Tenant should be awarded compensation and a return of rent.
36. When a party makes an application to the Rental Office, the onus is on that party to support their application with convincing evidence. Here, the onus rested on the Landlord to prove his claim for an alleged deficiency in rent. Likewise, the onus rested on the Tenant to prove her claim for compensation for return of rent and moving expenses.
37. In this case, the Commission finds that there was no meeting of the minds between the parties with respect to the terms of the tenancy. For example, the Supplemental Agreement stated:
 4. During the lease period, if [the Landlord and his family] are not living in the house, [the Tenant] shall bear all related costs incurred from using the house, including water, electricity, heating, lawn mowing, snow removal, etc. If [the Landlord and his family] are also using the house, the related costs shall be shared equally.
38. In the Commission's view, despite the fact that the Supplemental Agreement may have been made with the intention of adding certainty between the parties respecting the terms of the tenancy, it had had the opposite effect. The paragraph cited above lacks clarity and certainty with respect to the amount of rent the Tenant was expected to pay each month depending whether the Landlord and/or his son were present at the Rental Unit.
39. Reviewing not only the testimony but also some 250 pages of documentation, as well as many post-hearing emails from the parties, the Commission finds that the Tenant sincerely believed she had the whole house for her family for \$2,500.00 per month, with no security deposit required. That seemed to be the case at first and she paid full rent at the first of February 2024. Then the Landlord's family appeared and she paid only a part of the rent, \$2,199.00, on March 1, 2024, decreasing further to \$1,875.00 on April 1, 2024 and remaining at \$1,875.00 each month thereafter up to and including August 1, 2024. The Tenant and her family were absent during the summer while they visited family in China. The Landlord appeared to tolerate the reduction in rent as he did not file any termination notice seeking to evict the Tenant. This is consistent with a possible interpretation of the key terms of the arrangement being that when the Landlord and/or his son were living at the Rental Unit, the Rent would be shared between the Landlord and Tenant. The tenancy ended when the Tenant moved out on September 30, 2024.
40. Due to the uncertainty in the terms of the tenancy, the Commission cannot ascertain how much rent was owing at any particular time and therefore finds that the Landlord has not proven his application for rental arrears. We allow the Tenant's appeal of Order LD25-009, in this respect.
41. Turning now to the Tenant's claim for a return of rent and moving expenses, we note that the Tenant has not established to the Commission's satisfaction that a return of rent, or reimbursement of moving costs, is justified. While landlords bear the majority of the burden for ensuring that contractual terms are clearly specified in a tenancy agreement, the Tenant has not directed the Commission to sufficient authority to justify a

determination that a return of rent or award of moving costs is called for in this case. The Tenant did, in fact, reside in the Rental Unit, and paid some rent during the time of the tenancy arrangement. We find that the Tenant has not met the burden of proof to establish her claim for return of rent and moving expenses and the Commission, therefore, denies the Tenant's appeal of Order LD25-009 with respect to her claim for compensation.

42. As a result, the Commission finds that neither party owes or is entitled to any further payments from the other. As noted previously, this appeal reflects unique facts and great caution should be applied in applying its findings to other factual situations.

G. CONCLUSION

43. The appeal is allowed. The Commission has reversed Order LD25-009 with respect to the Landlord's application for rental arrears but confirms Order LD25-009 with respect to the Tenant's application.

IT IS ORDERED THAT

- 1. The appeal is allowed.**
- 2. The Commission has reversed Order LD25-009 with respect to the Landlord's application for rental arrears. Accordingly, the Tenant is not required to pay any funds to the Landlord in respect of rental arrears.**
- 3. The Commission confirms Order LD25-009 with respect to the Tenant's previous claim for return of rent and moving expenses. Accordingly, the Landlord is not required to pay any funds to the Tenant in respect of a return of rent or award of moving costs.**

DATED at Charlottetown, Prince Edward Island, 24th day of June, 2024.

BY THE COMMISSION:

[sgd. Kerri Carpenter]
Kerri Carpenter, Vice-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.