



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: December 18, 2025

Dockets: LR25057

Type: Rental Appeal

INDEXED AS: Roger Birt Inc. v John Mayne, et al

2025 PEIRAC 66 (CanLII)

Order No: LR25-58

BETWEEN:

Roger Birt Inc. (the "Landlord")

Appellant

AND:

John Mayne, Krystal Pirch, Elaine Murphy,
Anne Raymond and Gerard Raymond (the "Tenants")

Respondents

ORDER

Panel Members:

Gordon MacFarlane, 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 November 4, 2025, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the Landlord cannot end the Tenants’ tenancies for the purpose of converting the residential property to non-residential use.

B. BACKGROUND

2. This appeal concerns a four-unit apartment building located at 15 Kensington Road, Charlottetown, PEI (the “Residential Property”). The four Tenants occupy Units 1, 2, 3 and 4, each with their own tenancy agreement (the “Tenancies”).
3. On March 25, 2025, the Landlord gave each of the four Tenants a letter stating that it intended to sell the Residential Property due to family estate requirements.
4. On July 9, 2025, the Landlord served all four Tenants with a *Form 4(B) Eviction Notice* with an effective date of January 31, 2026, for the reason of converting the Residential Property to non-residential use (“Eviction Notices”).
5. On July 29, 2025, each of the four Tenants filed a *Form 2(A) Tenant Application to Determine Dispute* (the “Applications”) with the Rental Office disputing the Eviction Notices. On July 30, 2025, the Tenants served the Landlord’s representative with copies of the Applications via email. The Tenants appointed John Mayne to represent them during the proceedings.
6. On September 18, 2025, John Mayne and the representative for the Landlord participated in a teleconference hearing before the Rental Office.
7. On September 25, 2025, the Rental Office issued Order LD25-356 which found the Eviction Notices to be invalid and ordered that the Tenancies would continue in full force and effect.
8. The Landlord appealed Order LD25-356 on October 10, 2025.
9. The Commission heard the appeal on November 4, 2025, by way of telephone conference. The Landlord, Roger Birt Inc. was represented at the hearing by legal counsel, Will Cann. Nancy Birt (“Birt”) attended as a witness for the Landlord. The Tenants were represented at the hearing by John Mayne (“Mayne”).

C. DISPOSITION

10. The appeal is dismissed. The Commission finds that the Landlord has not provided sufficient evidence to demonstrate that they require possession of the Residential Property at this time in order to convert it to a non-residential use. The Commission finds the Eviction Notices to be premature in the circumstances. Therefore, the Tenancies shall continue.

D. ISSUES

11. The issue for the Commission to determine in this matter is whether the Landlord is permitted to terminate the ongoing Tenancies with the Tenants, pursuant to clause 64(1)(b) of the *Act* in order to convert the Residential Property to a non-residential use.

E. SUMMARY OF EVIDENCE

12. The Landlord submitted an affidavit of Nancy Birt, who is an officer of the Landlord, Roger Birt Inc. The affidavit states that the Residential Property has operated for decades as a rental property, but over the past several years its viability as a rental property has been declining. Birt's affidavit states that earlier this year, the Landlord decided that it could not continue to operate the Residential Property as a rental property, which prompted the letters to the Tenants on March 25, 2025. Those letters advised the Tenants that the Residential Property would be sold. Birt's affidavit says it soon became apparent that the market for such buildings is thin and the sale of the Residential Property in its present state was not viable. Ultimately, she states it was decided that the Residential Property would be adapted to some other use, but they do not know what exactly that use will be. Birt's affidavit concludes that since the time the Eviction Notices were served, the Landlord's intention has remained the same: that the Residential Property will no longer be used as a residential rental property.
13. At the hearing, Birt testified that there are presently no clear plans for future development of the Residential Property. She said at this time, the intention would be to sell the Residential Property as a vacant building.
14. The Tenants' evidence at the hearing was presented by Mayne. His evidence was brief, but can be summarized in saying that the Tenants of the Residential Property have had long tenures in the building – they have made their homes there. Mayne testified that all of the Tenants are facing a lot of uncertainty about where they will live in the middle of a housing crisis. When the Residential Property was first listed for sale, they understood that when an apartment building is sold, the tenants go with it. However, then they received the Eviction Notices for conversion to a non-residential use. Mayne's evidence was that the Residential Property was shown about six times and then it was taken off the market.

F. ANALYSIS

15. Section 51 of the *Residential Tenancy Act* provides that a tenancy may only be terminated in accordance with the *Act*. In this case, the Landlord is relying on section 64 as a means to terminate the Tenancies. That section states:

64. Landlord's notice for demolition, conversion, repairs, renovations

- (1) A landlord may give a notice of termination if the landlord, after obtaining all necessary permits and approvals as required by law, requires possession of the rental unit in order to
 - (a) demolish the rental unit;
 - (b) convert the rental unit to a non-residential use; or

- (c) subject to the approval of the Director under subsection (2), do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.
- 16. Specifically, the Landlord is seeking to end the Tenancies in accordance with clause 64(1)(b) as they have said they intend to convert the Residential Property (including all four rental units) into a non-residential use.
- 17. Order LD25-356 of the Rental Office found that in order for a landlord to be successful in terminating a tenancy for conversion, the landlord must meet two preconditions: (1) that the landlord must, in good faith, intend to convert the residential property to a non-residential use; and (2) that the landlord must obtain all the necessary permits and approvals as required to carry out the conversion.
- 18. In the result, Order LD25-356 concluded that the Landlord did not meet the first precondition of good faith because the Landlord provided insufficient evidence to establish, on a balance of probabilities, the genuine intention to convert the Residential Property to non-residential use. The Order came to this conclusion, in part, because the Landlord's future intentions for the Residential Property changed throughout the eviction process.
- 19. After hearing this appeal, the Commission agrees with the outcome of Order LD25-356 – the Commission is not satisfied, in the circumstances, that the Landlord can terminate the Tenancies pursuant to clause 64(1)(b). However, we come to that conclusion for different reasons than the Officer in Order LD25-356. In particular, the Commission is satisfied that the Landlord has demonstrated a genuine intention to convert the Residential Property to a non-residential use in the future. However, as will be discussed in more detail below, we find that the Landlord's Eviction Notices are premature in this case, and that the Landlord does not "require possession" of the Residential Property at this point in time, as their immediate plans would see the Residential Property vacant and unused pending a future sale and eventual conversion to a non-residential use.

Landlord's Genuine Intention

- 20. Order LD25-356 found that a Landlord's good faith is a precondition to terminating a tenancy for conversion (per s. 64(1)(b)). The Order reasons that although section 64 does not use the words "good faith", because section 65 permits former tenants to file an application where a notice was given in *bad faith*, it logically follows that an eviction notice given to a tenant under sections 62, 63 or 64 requires a *good faith* analysis. The Officer relies on a case from the Ontario Supreme Court when considering the meaning of good faith in the context of a landlord's termination.
- 21. In the Commission's opinion, the conclusion in Order LD25-356 in respect of a landlord's good faith is reasonable in its effect; however, we come to that effect in a different manner.
- 22. Section 64 does not include the words "in good faith", unlike sections 62 and 63. This is not to say that the Rental Office and Commission should not be concerned with the landlord's genuine intent when seeking to terminate a tenancy. However, in our opinion, to conclude that the landlord's good faith is a "precondition" to terminating a tenancy under

section 64, because of the language of section 65, is not supported through a reasonable statutory interpretation. Rather, as we interpret it, the Rental Office and Commission should be satisfied, on the whole, that a tenancy is being terminated in accordance with the *Act* as required by section 51. We accept that, in some cases, this may mean being satisfied the landlord is acting with genuine intent in the circumstances.

23. For example, the Supreme Court of Canada has commented that “good faith contractual performance” is a general organizing principle of the common law of contract that underpins and informs the various rules in which the common law, in various situations and types of relationships, recognizes obligations of good faith contractual performance.¹ In our opinion, it is this general common law principle that underpins any consideration of the landlord’s genuine intent,² rather than a “precondition” or the implication of “bad faith” per section 65.
24. In the present case, the Commission is satisfied that the Landlord has been forthright with their intentions for the Residential Property. Birt’s affidavit and evidence at the hearing was candid and we accept that it is the genuine intention of the Landlord to eventually sell the Residential Property for a future non-commercial use.

Interpretation and Application of clause 64(1)(b)

25. The Commission must now consider how to interpret and apply clause 64(1)(b) in light of the particular facts and circumstances of this case.
26. The Landlord’s legal counsel submits that an interpretation of clause 64(1)(b) must take into account that using property as a residential rental property is only one possible use and that the *Act* contemplates that a landlord’s property does not need to continue as a rental property forever. In simpler terms, he submits that section 64 of the *Act* allows a landlord to stop being a landlord.
27. The Landlord encourages the Commission to accept an interpretation of clause 64(1)(b) that would permit a landlord to terminate a tenancy if the landlord provides evidence of its intention to convert a premises to a non-residential use that is accepted by the Rental Office or Commission, as the case may be. Counsel submits compelling and credible evidence from tenants that the landlord intends to continue using the property as a residential rental property would be needed in response.
28. Section 64 of the *Act* sets out three specific options for a landlord to end a tenancy where the landlord requires possession of the rental unit in order to:
- (a) demolish the rental unit;
 - (b) convert the rental unit to a non-residential use; or
 - (c) ... do repairs or renovations to the rental unit that are so extensive that they require vacant possession of the rental unit.

¹ *Bhasin v Hrynew*, 2014 SCC 71, at para 33.

² Section 101 of the *Residential Tenancy Act* provides that, except as modified or varied by the *Act*, the common law respecting landlords and tenants applies in the province. Further, the British Columbia Court of Appeal has commented that the application of the common law of contract is at the core of the dispute resolution function pursuant to that province’s *Residential Tenancy Act* (*Jestadt v Performing Arts Lodge Vancouver*, 2013 BCCA 183, at para 35.)

29. In our interpretation, clauses (a) and (b), in particular, are in recognition of the Landlord's position that a residential rental property need not operate as such forever. The *Act* does contemplate options by which a landlord can repurpose its property. However, importantly, we note that each of those options requires the landlord to obtain all necessary permits and approvals, and contemplates that the landlord "requires possession" of the rental unit. This signals to the Commission that terminating tenancies is one of the last steps in the process.
30. When interpreting and applying the *Residential Tenancy Act*, the Commission is mindful of its role in balancing the rights of landlords to, for example, convert, demolish or renovate their properties on the one hand, with the rights and protections afforded to tenants by the *Act* on the other. One of those protections included in section 64 is that the scheme is set up in such a way that terminating a tenancy will often be the *last step* in the process. Subsection 64(1) requires that before even giving a notice of termination the landlord must obtain all necessary permits. The subsection also provides that the landlord must "require possession of the rental unit in order to" demolish, convert or renovate.
31. In the present case, while we accept that the Landlord genuinely intends to sell the Residential Property as non-residential, Birt's evidence was clear that, presently, there are no specific plans for future development of the Residential Property, other than to say it will be non-residential. Birt also testified that, at this time, the intention would be to sell the property as a vacant building.
32. Setting aside for a moment the requirement to obtain all necessary approvals and permits, based on the facts and evidence presented in the present case, we are not satisfied that the Landlord has demonstrated that they actually "require possession" of the Residential Property at this time.
33. For example, at the hearing, the Landlord's legal counsel submitted that because the property has been set up as an apartment building for so many years, there are some questions about what future use the structure of the building might allow for. When asked by the Commission whether the *Act* permits those determinations to be made while the Tenants occupy the rental units, the Landlord's counsel responded that it is difficult in those circumstances for a property owner to assess what it has, when it has an apartment building and wants to convert it to something else. However, the Commission notes that section 23 of the *Act* permits landlords to enter rental units (with notice) for the purpose of an appraisal or showing a potential purchaser, as examples.
34. In effect, the Landlord in this case has sought to terminate the Tenancies in order to achieve vacant possession of the Residential Property. While we accept the Landlord's genuine intent to eventually convert the vacant property to non-residential, based on the facts and evidence presented in this case, the Commission finds the Landlord's Eviction Notices to be premature.
35. In our interpretation, clause 64(1)(b) does not permit the Landlord to give notices of termination in order to convert the Residential Property into a vacant building for the purpose of its future sale. Ultimately, we are not satisfied on the evidence that the Landlord actually "requires possession of the rental unit" in order to effect their future plans to convert the use of the Residential Property *at this point in time*.

36. Further, we note that the Landlord has not obtained any permits or approval to convert the Residential Property into a non-residential use, nor have they provided sufficient evidence to demonstrate that no permits or approvals are necessary. This makes sense given that the Landlord has stated they do not yet have clear plans for future development of the property. However, for the Commission, this underscores that the Eviction Notices are premature in the circumstances.

37. For these reasons, the Commission declines to give effect to the Landlord's Eviction Notices and finds that, for the time being, the Tenancies will continue. As stated, the legislative scheme is set up in a way that eviction will often be the last step in the process – in these circumstances, the Landlord is attempting to effect that step first. The Tenants have provided evidence and submissions that highlight the importance of preserving tenancies until the end of the process.

G. CONCLUSION

38. The Landlord's appeal is dismissed. The Tenancies will continue.

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **The Tenancies will continue in full force and effect.**

DATED at Charlottetown, Prince Edward Island, 18th day of December, 2025.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]

Gordon MacFarlane, 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.