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Dockets: LR26028
Type: Rental Appeal

INDEXED AS: Kim Gervais and Anthony Tierney v. Edzard Keunecke
2026 PEIRAC 30 (CanLII)
Order No: LR26-22

BETWEEN:

Kim Gervais and Anthony “Tony” Tierney (the “Tenants”)

Appellants

AND:

Edzard “Ed” Keunecke (the “Landlord”)

Respondent

ORDER

Panel Members:

Gordon MacFarlane, Commissioner
Pamela J. Williams, K.C., Chair

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 May 27, 2026, and asks the Commission to determine whether the Residential Tenancy Office (the “Rental Office”) erred in finding that the tenancy between the parties will terminate effective 5:00 pm on May 22, 2026, and that the Tenants must pay the Landlord \$2,222.58 by June 15, 2026

B. BACKGROUND

2. This appeal concerns a rental unit located at 3 – 62 Walthen Drive, Charlottetown, PEI (the “Rental Unit”).
3. The Tenants moved into the Rental Unit on March 1, 2026, under a written, fixed-term tenancy agreement. Rent in the amount of \$1,300.00 is payable on the first day of the month. A \$1,300.00 security deposit was paid prior to the Tenants moving into the Rental Unit.
4. On April 11, 2026, the Landlord served the Tenants with the first *Form 4(A) Eviction Notice* with a vacate date of May 1, 2026 (the “First Notice”) for non-payment of April rent, in the amount of \$1,300.00.
5. On April 17, 2026, one of the Tenants filed with the Rental Office a *Form 2(A) Tenant Application to Determine Dispute* (the “Application”) on behalf of the Tenants disputing the First Notice. The Application was e-mailed to the Landlord.
6. On April 29, 2026, the Rental Office e-mailed the parties notice of a tele-hearing scheduled for May 14, 2026.
7. On May 4, 2026, the Landlord served the Tenants with the second *Form 4(A) Eviction Notice* with a vacate date of May 24, 2026 (the “Second Notice”) for non-payment of May rent, in the amount of \$1,300.00.
8. Collectively, the First Notice and the Second Notice are referred to as the “Notices.”
9. On May 5, 2026, the Landlord filed with the Rental Office a *Form 2(B) Landlord Application to Determine Dispute* seeking to keep the Tenants’ security deposit and rent owing.
10. On May 8, 2026, the Rental Office sent the parties a 15-page PDF evidence package.
11. On May 14, 2026, the Tenants and the Landlord participated in the tele-hearing before the Rental Office.
12. On May 15, 2026, the Rental Office issued Order LD26-156 which ordered that the tenancy between the parties will terminate effective 5:00 pm on May 22, 2026 and Order LD26-157 which ordered that the Tenants must pay the Landlord \$2,222.58 by June 15, 2026.
13. The Tenants appealed Order LD26-156 and Order LD26-157 on May 15, 2026.

14. The Commission heard the appeal on May 27, 2026, by way of telephone conference. The Tenants, Kim Gervais and Anthony “Tony” Tierney, attended the telephone hearing and the Landlord, Edzard “Ed” Keunecke attended the telephone hearing.
15. The applicable legislation is the *Residential Tenancy Act*, cap. R-13.11 (the “Act”).

C. DISPOSITION

16. The Appeal is dismissed and Orders LD26-156 and LD26-157 are confirmed, subject to the slight modifications in the amount of rent owing and the timelines as set out below. The tenancy is terminated, and the Tenants and all occupants are required to vacate the Rental Unit in accordance with this Order.

D. ISSUES

17. Has the Landlord established a lawful basis under the *Act* to terminate the tenancy for non-payment of rent and recover the rent arrears owing?

E. SUMMARY OF EVIDENCE

Tenants’ Evidence

18. The Tenants testified that when they took possession of the Rental Unit, they found its condition to be unsatisfactory. They stated that they cleaned and painted the Rental Unit at their own expense and effort in order to improve its appearance.
19. The Tenants further testified that they experienced a number of issues with the Rental Unit during their tenancy. These included the presence of mice, cracked walls and appliances in poor working condition.
20. The Tenants submitted that the Landlord had agreed to reimburse them for the cost of the paint they used to improve the Rental Unit but then failed to do so. The Tenants also alleged that the Landlord made other commitments regarding the tenancy that were not fulfilled.
21. The Tenants testified that, during March 2026, the Landlord requested that they clear snow from a large parking area located at the property. They stated that the work required took over 20 hours to complete and that they did not receive compensation from the Landlord for their efforts.
22. With respect to the rent arrears, the Tenants acknowledged that the April 2026 rent was not paid when due and that they did not pay the arrears within ten days of receiving the First Notice on April 11, 2026.
23. The Tenants testified that the delay in payment resulted from an issue involving the receipt of funds through their social assistance program. They stated that the delay was beyond their control and temporarily prevented them from paying the rent within the required time limits.

24. The Tenants further testified that, near the end of April 2026, they advised the Landlord that they had sufficient funds to pay both the April and May 2026 rent, totalling \$2,600.00. According to the Tenants, the Landlord declined to accept the payment.
25. Tenant Gervais gave testimony regarding significant personal circumstances affecting her before and during the tenancy. She stated that she had relocated to Prince Edward Island after being the victim of a serious crime in another province and that she had been experiencing ongoing health challenges.
26. The Tenants submitted that, in light of the circumstances surrounding the tenancy, the Landlord should not be permitted to retain the security deposit. They also expressed the view that they should be compensated for expenses associated with vacating the Rental Unit.

Landlord's Evidence

27. The Landlord testified that the Tenants failed to pay rent for April 2026 and May 2026 and that, as of the date of the hearing, those amounts remained outstanding.
28. The Landlord testified that he served the First Notice on April 11, 2026, for non-payment of April's rent and subsequently served the Second Notice on May 4, 2026, for non-payment of May's rent.
29. The Landlord disputed the Tenants' allegations concerning the condition of the Rental Unit and testified that no formal complaints regarding maintenance, repairs, pests, or other deficiencies were brought to his attention during the tenancy.
30. With respect to the snow removal issue, the Landlord testified that the Tenants took it upon themselves to reduce their rent by \$100.00 for their March rent.
31. The Landlord testified that, notwithstanding the ongoing occupation of the Rental Unit by the Tenants, he had not received rent payments for two consecutive months and continues to incur expenses associated with the property.

F. ANALYSIS

32. In an appeal concerning a notice of termination for non-payment of rent, the Landlord bears the burden of establishing, on a balance of probabilities, that the statutory requirements of the *Act* have been satisfied and that there is a lawful basis to terminate the tenancy.
33. The material facts relevant to the issue of non-payment are not substantially disputed. The evidence establishes that rent in the amount of \$1,300.00 was due on April 1, 2026, and a further \$1,300.00 was due on May 1, 2026. The Tenants acknowledge that neither month's rent was paid when due or within 10 days of receiving Notice.

34. Section 61 of the *Act* permits a landlord to serve a Notice where rent remains unpaid. The *Act* further provides a tenant with an opportunity to preserve the tenancy by paying the full amount of rent owing within the prescribed period following service of the Notice, that being ten days. Where the arrears are paid within that period, the Notice is automatically rendered invalid or void and the tenancy continues. Conversely however, where the arrears are not paid within the prescribed timeframe, the landlord becomes entitled to rely upon the Notice and seek termination of the tenancy.
35. The evidence before the Commission establishes that the First Notice was served on April 11, 2026 for non-payment of April's rent. The Tenants acknowledged during the hearing that they did not pay the outstanding April rent within ten days of receiving the notice. Accordingly, the statutory conditions necessary to void the First Notice were not met.
36. The Tenants testified that they were unable to pay the April 2026 rent because of delays associated with the receipt of their social assistance benefits. The Commission accepts that the Tenants experienced personal and financial hardship and does not doubt the sincerity of their explanation or that the delay was unintentional. However, the *Act* does not provide discretion to excuse non-payment of rent on the basis of financial hardship, administrative delays or personal circumstances once the statutory payment period has expired. While such circumstances may explain why rent was not paid, they do not eliminate the obligation to pay rent, nor do they invalidate an otherwise lawful Notice.
37. The Tenants further testified that, near the end of April 2026, they advised the Landlord that they now had the funds to pay both the April and May's rent arrears but that the Landlord refused to accept payment. This evidence does not alter the outcome of the appeal. By that time, the ten-day statutory period following service of the First Notice had already expired. The right to automatically void the First Notice had therefore been lost. The *Act* does not require a landlord to reinstate that right by accepting late payment after the statutory deadline has passed.
38. The Commission has also considered the Tenants' evidence concerning the condition of the Rental Unit, including allegations regarding mice, damaged walls, faulty appliances and unfulfilled promises by the Landlord. However, concerns regarding maintenance or the condition of a rental unit do not relieve a tenant of the obligation to pay rent when due.
39. Similarly, the Commission has considered the Tenants' submissions respecting their personal circumstances, including health challenges, the relocation to Prince Edward Island, and the difficulties associated with moving from the Rental Unit. The Commission is sympathetic to those circumstances. Nevertheless, the Commission's role is to apply the *Act*. Once the statutory requirements for termination due to non-payment of rent have been established, the Commission has no authority or jurisdiction to disregard those requirements based solely upon considerations of hardship, however difficult they may be.
40. The evidence further establishes that the Tenants remained in possession of the Rental Unit throughout both April and May 2026 while no rent was paid for either month. The Commission therefore finds that rent arrears in the amount of \$2,600.00 accumulated during that period.
41. Although the Rental Office determined that the Second Notice was invalid, that finding does not affect the validity of the First Notice or the Landlord's entitlement to terminate the

tenancy for the unpaid April rent. The First Notice independently supports termination of the tenancy because the rent arrears giving rise to that notice were not paid within the statutory period required by the *Act*.

42. The Commission finds that the Landlord has established, on a balance of probabilities, that the Tenants failed to pay the April 2026 rent and did not remedy that default within the statutory period following service of the First Notice.
43. The Commission further finds that rent for May 2026 remains outstanding and for June 2026 prorated to the date of termination of tenancy also remains outstanding. The Tenants owe the Landlord rent arrears totalling \$3,076.63
44. The Commissions finds that the Landlord may retain the security deposit in the amount of \$1,300.00 plus interest up to the date of the Order in the amount of \$9.30 to be applied to the rent owed.
45. While the Commission has considered the Tenants' explanations for the non-payment of rent and the personal hardships described during the hearing, those circumstances do not provide a legal basis under the *Act* to set aside a valid notice of termination for non-payment of rent.

G. CONCLUSION

46. Accordingly, the Appeal is denied. The Commission confirms the termination of the tenancy and finds that the Tenants owe the Landlord rent for April and May, 2026, and June prorated to the date of termination.

IT IS ORDERED THAT

1. The Landlord may keep the Security Deposit in the amount of \$1,300.00 plus interest in the amount of \$9.30 to offset any rent owing.
2. The Tenants must pay the Landlord the balance of rent owed in the amount of \$1,767.33 by June 18, 2026.
3. The tenancy between the parties shall terminate effective 5:00 p.m. on June 11, 2026.
4. The Tenants and all occupants shall vacate the Unit by June 11, 2026.

DATED at Charlottetown, Prince Edward Island, 4th day of June, 2026.

BY THE COMMISSION:

[sgd. Gordon MacFarlane]

Gordon MacFarlane

[sgd. Pamela J. Williams, K.C.]

Pamela J. Williams, K.C.

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.