

Introduction

- [1] On May 1, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing a Notice of Termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the Application was a Notice of Termination by Landlord (Form 4A) dated April 30, 2023, effective May 30, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

You or someone you have allowed on the property have disturbed or endangered others.

- [3] On April 30, 2023, the Landlord served the Notice on the Tenant by posting it to the door of the Residential Property. On May 1, 2023, the Tenant served the Application on the Landlord by e-mail.
- [4] On May 23, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Representative participated.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] In December 2014 the Tenant and a previous landlord entered into a written month-to-month tenancy agreement for the Residential Property. The tenancy agreement continued when the current Landlord purchased the Residential Property. Rent is \$934.25 due on the first day of the month. The parties could not agree on the amount of the security deposit which was paid.

Landlord's Evidence and Submissions

- [6] The Representative testified he had received a complaint from N.A. regarding the Tenant and that is the reason he served the Notice.
- [7] N.A. stated his unit is below the Residential Property. N.A. stated on April 9, 2023, he went to bed at 11:00 p.m. After that, he could hear the Tenant assembling furniture in the Residential Property. He banged on the ceiling but the noise did not stop. He called the police around 3:30 a.m. as the noise was still continuing and he could not sleep. The police attended around 4:00 a.m. and the noise stopped at that time. The next day the Tenant sent N.A. a sarcastic message about calling the police.

Tenant's Evidence and Submissions

- [8] The Tenant admitted she was loud on the day in question and it was bad timing. She had purchased a new bed and needed help assembling it from R.M. R.M. was only available between 12:00 a.m. and 3:00 a.m. because of his work schedule. She stated some tools and pieces of the bed did fall on the floor and they had a hard time setting up the bed. The Tenant stated the police did attend the Residential Property and helped them finish setting up the bed. She stated it was an isolated incident and would not happen again.

Analysis

[9] The Landlord served the Notice pursuant to sub-subsection 61.(1)(d)(i) of the *Act*, which states:

Landlord's notice for cause

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

- (d) the tenant or a person permitted on the residential property by the tenant has*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.*

[10] N.A. stated he could hear noise coming from the Residential Premises between 11:00 p.m. and 4:00 a.m. and he could not sleep. The Tenant stated she was building a bed and this was the only time R.M. was able to help her. The Officer notes that N.A. had his sleep disturbed by the Tenant, however the evidence suggests that this was an isolated incident. The Officer finds that this disruption does not rise to a level that warrants a termination of the tenancy agreement.

Conclusion

[11] The Notice is invalid and the Application is allowed.

[12] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 2nd day of June, 2023.

(sgd.) Mitchell King
Mitchell King
Residential Tenancy Officer

NOTICE**Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals Commission (the "Commission") by serving a Notice of Appeal with the Commission and every party to this Order within 7 days of this Order. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

Filing with the Court

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.