

Introduction

- [1] On April 28, 2023 and May 4, 2023 the Tenants separately filed a Tenant Application to Determine Dispute (Form 2As) (the “Applications”) with the Residential Tenancy Office (the “Rental Office”). The Tenants have separate tenancy agreements and reside in separate rental units; however, agreed to hear the Applications together at the same hearing. The Applications are disputing a Notice of Termination pursuant to subsection 62.(4) of the *Residential Tenancy Act* (the “Act”).
- [2] Attached to the Applications were two Notice of Terminations by Landlord (Form 4s) dated April 15, 2023 effective June 30, 2023 (the “Notices”). The Notices were served individually on the Tenants for the following identical reason:

I want possession of the premises for occupation by: me (s. 15.(1)(a) of Act).

- [3] The Officer notes that the Landlord served the Tenants with the Notices that were on the (Form 4) Notice of Termination by Lessor of Rental Agreement (which are the old eviction notices) under the *Rental of Residential Property Act*. On April 8, 2023, the Executive Council of Prince Edward Island proclaimed the *Act* (the new law) and thus repealed the *Rental of Residential Property Act* (the old law). This means as of April 8, 2023 the *Act* is the law regarding landlord and tenant disputes in Prince Edward Island. Under the *Act* the Landlord would rely on the following reason for the eviction:

I want possession of the rental unit for: myself (pursuant to subsection 62.(1) of Act).

- [4] The Officer notes that due to the transition period from the old law to the new law and changing of the Forms, the Officer finds that the Landlord used the Form he believed to be correct to begin the eviction process and was unaware of the new eviction notice. The Officer will make a decision on the merits.
- [5] The Officer notes, however, that under the *Act* the Landlord would have needed to serve the Tenants with a Form 4(B) Eviction Notice and use the above noted reason. Using subsection 62.(1) of the *Act* requires a 4-month notice period to vacate. Therefore, the Officer adjusts the effective date under consideration to August 15, 2023.
- [6] On April 28, 2023 one of the Tenants served the Landlord’s representative with their application by hand-delivery. The other tenant did not serve their application on the Landlord’s representative. On April 15, 2023 the Landlord’s representative served the Notices on the Tenants by hand delivering it to each of them.
- [7] On June 5, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the “Officer”). The Tenants appeared with their respective representatives. The Landlord is a corporation and had a representative appear on its behalf.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notices?

Summary of the Evidence

- [8] In late 2019 one of the Tenants and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Premises. The Residential Premises are situated in a 17-unit motel (the “Motel”). Rent is \$800.00 due on the first day of the month. A security deposit of \$750.00 was required and paid.

- [9] In November 2021 the other tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Premises. Rent is \$808.00 due on the first day of the month. A security deposit of \$500.00 was required and paid.

Landlord's Evidence and Submissions

- [10] The Landlord's representative stated that the Motel is generally used for tourism and short term accommodations. Due to the COVID-19 pandemic the Motel was closed to tourist for the past three years. This allowed the existing tenants to stay long-term. The Landlord's representative stated that he selected Units 1-5 to accommodate for tourism and that there was no specific nor bias reason. The Landlord's representative admitted that his license as a tourist establishment was not renewed yet for 2023 because of the rule changes he delayed the renewal process. The Landlord's representative stated that the short-term accommodations generally would last from June to October.

Tenant's Evidence and Submissions

- [11] The Tenants and their representatives expressed concerns over the commercial use yet not having an up to date license. The Tenants do not believe the Notices were served in good faith.

Analysis

- [12] The Landlord's reason for terminating the tenancy agreement is pursuant to subsection 62.(1) of the *Act* which states:

Landlord's notice for landlord's use of property

A landlord who is an individual may end a tenancy by giving a notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by

- (a) *the landlord;*
- (b) *the landlord's spouse;*
- (c) *a child, parent or a dependent of the landlord or the landlord's spouse; or*
- (d) *a person who provides or will provide care services to the landlord, the landlord's spouse, or a child, parent or dependent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the residential property or mobile home park in which the rental unit is located.*

- [13] The Officer notes that in such matters where there is a dispute over a Notice of Termination by Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [14] The Officer finds that the Landlord is a corporate entity. For a landlord to use subsection 62.(1) the landlord must be an *individual*. Further, the Officer finds that the Landlord's specific reason for the termination of the tenancy agreements is for commercial use rather than use for the purposes of residential occupation for one of the prescribed persons above. Therefore, the Officer finds that the Landlord has not established valid ground for terminating the tenancy agreement pursuant to subsection 62.(1) of the *Act*. The Applications are allowed and the Notices are invalid.

Conclusion

[15] The Applications are allowed and the Notices are invalid.

[16] The tenancy agreements shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

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

DATED at Charlottetown, Prince Edward Island, this 8th day of June, 2023.

(sgd.) Cody Burke
Cody Burke
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 **20** 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.