

Introduction

[1] On May 10, 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 (Form 4) dated May 3, 2023, effective June 3, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

You or persons admitted to the premises by you have conducted yourself/themselves in a manner as to interfere with the possession, occupancy or quiet enjoyment of other lessees (s.14(l)(a) of Act); and

An act or omission on your part or on the part of a person permitted in or on the residential premises/property by you has seriously impaired the safety or lawful right or interest of me or other lessees in the residential property (s.14(l)(e) of Act).

[3] The Particulars of Termination of the Notice stated:

"Sometime in March you were notified by [B.M.] of your company ["J"] who is not supposed to be on the property. Also tenants on this property have concerns about their safety."

[4] On May 3, 2023, the Landlord served the Notice on the Tenant by putting it in the Tenant's mailbox. On May 10, 2023, the Tenant served the Application on the Landlord by posting it on his door.

[5] On May 25, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Landlord participated.

Issue to be Decided

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

Summary of the Evidence

[6] In June 2022 the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. The Residential Property consists of an apartment in a three-unit apartment building (the "Building"). Rent is \$1,200.00 due on the first day of the month. A security deposit of \$1,200.00 was paid.

Landlord's Evidence and Submissions

[7] The Landlord stated there was an altercation between the Tenant, the Tenant's mother ("F") and J on November 10, 2022, at the Residential Property. The police were called and J was removed from the Residential Property and a stay-away order was put in place.

[8] On May 3, 2023, the Notice was served on the Tenant because J was seen at the Building. Other tenants have expressed their concern to the Landlord about their safety if J is around the Building. The Landlord is concerned there may be further violence at the Residential Property if J is around and J should not be there if there is a stay-away order in place.

- [9] B.M. stated she was told that J was served with a stay-away order and he was not supposed to be around the Tenant. B.M. observed J at the Building on March 17, 2023. B.M. warned the Tenant twice that J could not be at the Building prior to the Tenant being served with the Notice. B.M. stated she received a text message from the Tenant stating that J only comes to the Building to help the Tenant with her laundry. A copy of the text message was submitted into evidence.

Tenant's Evidence and Submissions

- [10] The Tenant stated the stay-away order is not between her and J but it is between the Tenant's mother and J. The Tenant stated she would send the Officer a copy of the stay-away order after the hearing. She stated she was told by the police and child and family services that it was ok to have J around the Residential Property as he has shared custody of their children.
- [11] The Tenant stated that J came to the Residential Property once to help her with her laundry, as she just had surgery and needed the help. She stated D.C. visits her on a regular basis and others may be getting the two males mixed up.
- [12] D.C. stated he is at the Residential Property on a regular basis and he has the same build as J, so people might be getting them mixed up. J still has custody of the children and J is at the Building once in a while to pick up the children.

Analysis

- [13] On April 8, 2023, the Executive Council of Prince Edward Island proclaimed the *Residential Tenancy Act* (the "Act"), and thus repealed the *Rental of Residential Property Act* (the "Former Act"). This means as of April 8, 2023, the *Residential Tenancy Act* is the law regarding landlord and tenant disputes on Prince Edward Island.
- [14] The Officer notes that the Notice which was served by the Landlord was created pursuant the *Rental of Residential Property Act Regulations* for use under the *Former Act*. The sections cited in the Notice do not exist in the current *Act*. Based on the evidence presented at the hearing, the Officer notes that the Landlord is alleging the Tenant has breached subsections 61.(1)(d)(i) and (ii) of the current *Act* which state:

61.(1) 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,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

- [15] The Landlord served the Notice on the Tenant as the Landlord believed there was a stay-away order in place stating that J was not supposed to be around the Tenant. The Landlord was concerned for the safety of the Tenant as well as the other tenants in the Building. The Landlord was concerned that there could be further violence committed by J at the Building.

- [16] The Tenant submitted a copy of the stay-away order to the Officer after the hearing. The Officer confirmed the stay away order was between J and the Tenant's mother. There was no evidence presented to the Officer stating there was a stay-away order between the Tenant and J or that J could not be at the Residential Property. The Officer further notes that when the initial incident occurred on November 10, 2022, which was the reason for the stay-away order, the Tenant was not served with a Notice at that time.
- [17] Based on the totality of the evidence, the Officer finds that the Landlord has not provided sufficient evidence for the Officer to be able to find that the Tenant has breached the *Act*.

Conclusion

- [18] The Notice is invalid and the Application is allowed.
- [19] 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 8th 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.