

Introduction

- [1] On April 27, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) dated April 26, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing a Notice of Termination by Landlord (Form 4B) pursuant to subsection 62.(4) of the Act.
- [2] Attached to the Application was a Notice of Termination by Landlord (Form 4B) dated April 16, 2023 for effect June 30, 2023 (the "Notice"). The Notice was served on the Tenant for the following reason:

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

- [3] On April 16, 2023 the representative served the Notice on the Tenant by hand delivering it to the Tenant. The Tenant had one month to dispute the Notice. On April 26, 2023 the Tenant served the Application on the representative by e-mail.
- [4] On June 9, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared on behalf of themselves. The Landlord was represented by an authorized representative (the "Property Manager").

Preliminary Matter

- [5] The Officer notes that the Notice has an effective date of June 30, 2023. At the hearing the Tenant brought up concerns regarding the effective date of the Notice. The Tenant suggested that the Act requires 4 months' notice to vacate. The Officer agreed with the Tenant's concerns and took the concerns under advisement. The Officer notes that subsection 62.(2) of the Act states:

Period of notice

The date for termination specified in the notice of termination shall be at least four months after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

- [6] The Officer notes that subsection 62.(2) requires at least four months' notice, and shall end on the day a period of the tenancy ends. The Officer finds that the four months would be August 2023 and the day the period of tenancy ends would be the last day of the month. The Officer notes that the fixed term is due to expire on June 30, 2023 but would convert to a month-to-month agreement. Therefore, the correct effective date for the Notice is August 31, 2023.

Issue to be Decided

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

Summary of the Evidence

- [7] On July 1, 2022 the Landlord and the Tenant entered into their second written fixed term tenancy agreement for the Premises. The second fixed term went from July 1, 2022 to June 30, 2023. The Tenant lived in the Residential Property since the summer of 2021. The Residential Property is a room with shared common areas. Rent is \$700.00 due on the first day of the month. A security deposit of \$650.00 was required and paid.

Landlord's Evidence and Submissions

- [8] The Property Manager stated that the Landlord is returning to Canada on August 15, 2023. The Landlord provided into evidence a copy of a flight itinerary. The Property Manager stated that the Landlord occupied that specific room when he first purchased the Residential Property in 2018. Due to Covid-19 the Landlord was unable to return to Canada. The Property Manager stated that the Landlord will occupy the Residential Property for an unknown amount of time while he decides what he wishes to do with the Residential Property. The Property Manager suggested the Landlord may live in the Residential Property for 6-months to a year, or look to sell the Residential Property. The Property Manager stated that the Landlord is acting in good faith and is only evicting the Tenant because of that room and nothing personal against the Tenant. The Landlord did submit a written submission into evidence.

Tenant's Evidence and Submissions

- [9] The Tenant stated that the Residential Property has seen a lot of changes regarding property management. The Tenant stated that the Landlord is evicting in bad faith because he wants to raise the rent on the room. The Tenant stated that the Landlord tried to evict her last year, and that her rent was illegally increased. The Tenant stated that the Landlord could select any room from the Residential Property and that many of the rooms beside her are identical to her room and the occupants have shorter term agreements.
- [10] The Tenant stated that if the Landlord is going to sell the Residential Property why not wait on evicting her. The Tenant stated that she is being singled out because her rent is cheaper. The Tenant stated that the Landlord's reasoning for eviction does not make sense if he's considering selling, and that he will occupy the Residential Property for 1 year.
- [11] The Tenant stated that she is being displaced and the Landlord's reasons for eviction are inconsistent with the evidence. Further, the Tenant stated that another tenant in the Residential Property is rent out rooms at different rents, and acts as a property manager which is confusing given that she has a tenancy agreement with the Landlord and the Property Manager who is on her tenancy agreement.

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 subsection 62.(1) of the *Act* permits a landlord who is an individual, to terminate a tenancy agreement if the landlord is in good faith taking possession of the Residential Property for residential occupation for a period of at least one year by themselves or a prescribed family member.
- [15] In this case, the Officer finds that based on the testimony of the Property Manager, the Landlord intends to move into the Residential Property for residential occupation, however, it was unclear based on the testimony whether or not the Landlord would occupy the Residential Property for at least one year. Further, the written submission provided by the Landlord in evidence does not provide any timeline or indication that the Landlord intends to reside in the Residential Property for at least one year.
- [16] The Officer finds that based on the testimony of the Property Manager that there is a probable chance that the Landlord does not reside in the Residential Property for at least one year, and may even sell the Residential Property. Therefore, the Officer finds that the Landlord has failed to establish, on a balance of probabilities, valid grounds to terminate the tenancy agreement under subsection 62.(1) of the *Act*. The Application is allowed and the Notice is invalid.

Conclusion

- [17] The Application is allowed and the Notice is invalid.
- [18] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed and the Notice is invalid.
- B. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 12th 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.