

Introduction

[1] On May 19, 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 Landlord Notice of Termination pursuant to subsection 61.(5) of the Act and was assigned Docket 23-388.

[2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated May 18, 2023, effective May 28, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

*You are repeatedly late in paying rent;
You or someone you have allowed on the property have disturbed or endangered others;
You or someone you have allowed on the property has caused damage to the rental unit;
You have not repaired damage to the rental unit; and
You have failed to comply with a material term of the tenancy agreement.*

[3] The Tenant's Application is also seeking a return of rent and this was assigned Docket 23-389, wherein the Tenant is also seeking pursuant to subsection 75(1)(c) of the Act:

A determination that my landlord contravened by right to quiet enjoyment, entered the rental unit unlawfully, prohibited and/or unlawful restricted access to the rental unit, changed the locks or faked to secure the rental unit, or any other material term of the tenancy agreement.

[4] On June 12, 2023, a teleconference hearing of the dockets was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Landlord participated.

Issue to be Decided

[5] The Officer was advised that the Tenant had previously vacated the rental unit. Therefore, the Tenant Application with respect to disputing the Notice is abandoned and withdrawn (Docket 23-388).

Issue to be Decided

- i. Is the Tenant entitled to a return of rent?

Summary of the Evidence

[6] In or about April 1 2023, the Landlord and the Tenant entered into an oral fixed-term rental agreement for 2-3 rooms within the Residential Property, which is a 5 bedroom detached single family home. Rent was \$950.00 per month due and there was no security deposit. The Landlord also resided at the residential rental.

[7] The Officer notes that the Landlord and Tenant are parties to a sub-tenancy agreement and that the Landlord is a Tenant to the Primary Landlord. The Primary Landlord was not a party to this matter and did not attend the hearing. The primary tenancy commenced in or about November 2020 and includes a rental payment of \$1,950.00 monthly.

Tenant's Evidence and Submissions

- [8] The Tenant's evidence is summarized as follows. The Tenant is seeking one month's return of rent. The Tenant stated her and her two children were moving into the premises and that she had to clean the rooms herself before they were fit for moving into and described them as being a disaster and filled with garbage. The Tenant also stated that she was only given two bedrooms despite being told she would have three. The Tenant testified that things were not in good working order including the fridge, toilet, and taps. The Tenant also stated that her peace was not respected in the home.
- [9] The Tenant provided several photographs which she stated illustrate the condition of the Premises.

Landlord's Evidence and Submissions

- [10] The Landlord's evidence is summarized as follows. The Landlord stated that she didn't tell the Tenant that she could have three bedrooms – only two. The Landlord testified that the home is old and that the water pressure is bad and that the rats in the freezer were for personal use (pet food) and were not rodents. The Landlord stated that she is working with the Primary Landlord to resolve some of the ongoing issues.

Analysis

- [11] The relevant sections of the Act state:

Application respecting contravention

s59. Where a landlord contravenes the obligations set out in sections 22 to 24 and 26 to 29, a material term of the tenancy agreement or a statutory condition set out in Part 2, the tenant may make an application to the Director under section 75 for an order as specified under subsection 85(1).

Application to determine disputes

S75(1)(c) Except as otherwise provided in this Act, a tenant, a landlord or a person representing a tenant or landlord may, during or within six months after termination of a tenancy agreement, make an application to the Director to determine (c) whether a provision of this Act or the regulations has been contravened.

Powers of the Director

S85(1)(b) After hearing an application, the Director may make an order (b) directing the payment or repayment of money from a landlord to a tenant or from a tenant to a landlord;

Obligation to repair and maintain

s28(1). A landlord shall provide and maintain the residential property in a state of repair that (a) complies with the health, safety and housing standards required by law; and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- [12] The Tenant is seeking a return of rent in the amount of \$950.00 which is equivalent to one month's rent (the Tenant resided at the premises for a little over two months). The Act requires that a residential rental be in a state of condition that is suitable for occupation by a Tenant. The Officer finds that the photographic evidence provided by the Tenant illustrates an overall condition that is not up to the standards required by the Act, including: the overall messy condition and lack of cleanliness, the washer/dryer mold, the rotting food/refrigerator, and garbage both inside and outside of the house, etc. The Rental Officer noted conflicting oral evidence between the parties and therefore placed an emphasis on the photographs.

Conclusion

[13] The Application is allowed. The Landlord failed to provide the Tenant with a premises that was reasonably suitable for occupation and shall therefore pay the Tenant \$950.00.

IT IS THEREFORE ORDERED THAT

A. The Landlord shall pay the Tenant \$950.00 within 30 days of this order.

DATED at Charlottetown, Prince Edward Island, this 16th day of June, 2023.

(sgd.) Jeremy Coffin

Jeremy Coffin
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.