

Introduction

- [1] On May 15, 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.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated May 12, 2023, effective June 12, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

You have failed to comply with a material term of the tenancy agreement.

- [3] On May 12, 2023, the Landlords served the Notice on the Tenant by email. On May 15, 2023, the Tenant filed the Application with the Rental Office and emailed a copy to the Landlords on the same date.
- [4] On June 9, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Landlords 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 November 2020 the Tenant and the Landlords entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property is a stand-alone house. Rent is \$1,650.00 per month 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 Landlords stated the Tenant has refused to allow the Landlords entry to the Residential Property several times. The Landlords stated there are repairs which have been requested by the Tenant and the Landlords have given the Tenant different times they could attend to address the repairs. The Tenant has told the Landlords the Tenant does not want them in the Residential Property.
- [7] The Landlords submitted text messages between the Landlords and the Tenant into evidence in which the Tenant stated she does not want R.G. in the Residential Property. The Landlords submitted emails into evidence between the Landlords and the Tenant which state the Landlords gave the Tenant at least 24-hour's notice that R.G. would be entering the Residential Property to do repairs. In the emails the Tenant told R.G. she did not want R.G. entering the Residential Property. The Landlords submitted a copy of an email into evidence from May 10, 2023. In the email the Landlords told the Tenant she may received a "*Form 4 Landlord Notice of Termination*" if the Tenant does not provide the Landlords access to the Residential Property.
- [8] The Landlords stated the Tenant submitted in her evidence that she does not want R.G. in the Residential Property because R.G. has a disability but the Landlords stated this is not true. R.G. stated he did have a head injury a few years ago but he is no longer suffering symptoms from the injury. M.G. denied that she told the Tenant that R.G. has a disability. The Tenant has told the Landlords that because the repair that is required needs to be completed by a plumber then the Landlords should just call a plumber and R.G. does not need to be involved in the repair.

Tenant's Evidence and Submissions

- [9] The Tenant stated there was a leak from a loose faucet in the Residential Property and then the faucet blew out and caused a water spill. The Tenant notified the Landlords at that time and the Landlords contacted a plumber to fix the faucet. The Tenant stated it was not fixed properly and a plumber needs to attend again to correct the problem. The Tenant stated R.G. previously stated the faucet repair was beyond his skill level so the Tenant does not believe R.G. needs to attend the Residential Property to deal with the repair and it should be repaired by a plumber.
- [10] The Tenant stated M.R. told the Tenant that R.G. could possibly have medical issues while completing repairs at the Residential Property and for the Tenant to call M.R. if R.G. exhibits any symptoms. The Tenant stated she does not want the responsibility of dealing with R.G.'s medical issues so she does not want R.G. at the Residential Property by himself.

Analysis

- [11] The Landlords testified the Tenant has breached a material term of the tenancy agreement by restricting the Landlords' ability to enter the Residential Property to complete needed repairs after providing the Tenant with 24-hour's notice. The Tenant testified she told the Landlords she did not want R.G. in the Residential Property because she did not want to be responsible for R.G. if R.G. experienced medical issues. "Division 4" of the Act describes the "Provisions Applicable During Tenancy" of all tenancy agreements.

- [12] Subsection 22.(c) of the Act states:

A tenant is entitled to quiet enjoyment of the rental unit including, but not limited to, the right to

(c) exclusive possession of the rental unit, subject only to the landlord's right to enter the rental unit in accordance with section 23.

- [13] Subsection 23.(b)(i) of the Act states:

A landlord shall not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(b) the landlord provides written notice to the tenant at least 24 hours before the time of entry and the purpose of the entry is to

(i) carry out a repair or replacement or do work in the rental unit.

- [14] Subsection 61.(1)(h) of the Act states:

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

(h) the tenant

(i) has failed to comply with a material term of the tenancy agreement, and

(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so.

- [15] The Officer notes that the *Act* does not give the Tenant the ability to restrict the Landlords' access to the Residential Property for repairs if the Landlords provide the Tenant proper notice, regardless of the Tenant's reasons for doing so. In this case, the Landlords and the Tenant testified the Tenant has told the Landlords the Tenant does not want R.G. at the Residential Property.
- [16] The *Act* requires a landlord to provide a tenant a written warning if there is a material breach of the tenancy agreement. The landlord may then end a tenancy if the tenant has not corrected the situation within a reasonable time after the written warning. The Officer notes the Landlords provided the Tenant with an email on May 10, 2023, telling the Tenant she may receive a termination notice if she does not allow the Landlords access to the residential property. On May 11, 2023, the Tenant sent the Landlords an email asking the Landlords to stop contacting her unless a repair person was contacted to attend the Residential Property.
- [17] The Officer finds based on the totality of the evidence that the Landlords have provided sufficient evidence to establish that the Tenant has breached a material term of the tenancy agreement by restricting the Landlords access to the Residential Property.

Conclusion

- [18] The Notice is valid and the Application is denied.
- [19] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 30, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 5:00 p.m. on June 30, 2023. The Tenant and all occupants shall vacate the Residential Property by this time and date.
- B. A certified copy of this Order may be filed in the Supreme Court and enforced by Sheriff Services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 19th 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.