

Introduction

- [1] On May 10, 2023 the Tenant filed a Tenant Application to Determine Dispute (Form 2A) dated May 6, 2023 (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing the effective date to vacate the Residential Property listed in the 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 27, 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 27, 2023 the Landlord served the Notice on the Tenant by email. The Tenant had one month to dispute the Notice.
- [4] On June 19, 2023 a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant appeared on behalf of herself. The Landlord appeared on behalf of himself.

Issue to be Decided

- i. What is the effective date by which the Tenant must vacate the Residential Property?

Summary of the Evidence

- [5] On September 16, 2021 the Landlord and the Tenant entered into a written fixed term tenancy agreement for the Residential Property lasting from October 1, 2021 to October 1, 2022. After the period of the fixed term tenancy agreement expired, the Tenant occupied the residence on a month-to-month basis. The Residential Property is a detached house. Rent is \$2,150.00 due on the first day of the month. A security deposit of \$1,500.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Landlord stated that the rental unit he lives in with his partner is being sold by the owner, and that the new owner plans to occupy it. As a result, the Landlord is being evicted from his place of residence, effective June 30, 2023.
- [7] The Landlord submitted into evidence a copy of the Notice received by his partner for their place of residence, dated April 18, 2023, with an effective vacate date of June 30, 2023.
- [8] The Landlord submits that he owns no other residential properties. Due to no longer being able to live in his current residence he plans to move into the Residential Property for an indefinite period of time greater than one year.

Tenant's Evidence and Submissions

- [9] The Tenant did not dispute the eviction, but submitted that she should be given four months before the required vacate date, in accordance with the standard information listed in the Notice.
- [10] The Tenant submitted evidence of text messages between the parties. These text messages showed that the Tenant was first informed on April 26, 2023 of the Landlord's decision to evict for personal use with an effective vacate date of June 30, 2023.

Analysis

- [11] The Officer notes that the Notice lists an effective date of June 30, 2023. At the hearing, and in the Application, the Tenant brought up concerns regarding the effective date of the Notice. The Tenant submits 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.

- [12] 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. Therefore, the correct effective date for the Notice is August 31, 2023.
- [13] 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.

- [14] 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.
- [15] 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.
- [16] In this case, the Officer finds that based on the testimony of the Landlord, he intends to move into the Residential Property for residential occupation. The Officer further finds based on the Landlord's testimony, that he intends to live in the Residential Property for at least one year.

Conclusion

- [17] The Application is allowed and the Notice is valid.
- [18] The tenancy agreement shall terminate effective 11:59 p.m. on August 31, 2023 and the tenant shall vacate by this time and day.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement between the parties shall terminate effective 11:59 p.m. on August 31, 2023, and the Tenant shall vacate the Residential Property by this time and date.
- B. A certified copy of this order may be filed with the Supreme Court and enforced by Sheriff services as permitted by the *Act*.

DATED at Charlottetown, Prince Edward Island, this 22nd day of June, 2023.

(sgd.) Colin Trewin
Colin Trewin
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.