

Introduction

- [1] On May 23, 2023, the Tenant filed a Tenant Application to Determine Dispute (Form 2A) (the "Application"), dated May 20, 2023, 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 17, 2023, effective June 17, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason, pursuant to s. 61.(1)(e) of the Act:
- You or someone you have allowed on the property have disturbed or endangered others*
- [3] On May 17, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. The Tenant served the Application on a representative of the Landlord.
- [4] On June 21, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a witness for the Tenant, the Representative, and a witness for the Representative participated in the hearing.

Issue to be Decided

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

Summary of the Evidence

- [5] In April 2022, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property is a rental unit situated in an apartment building. Rent is \$960.00 per month due on the first day of the month. A security deposit of \$960.00 was required and paid.

Landlord's Evidence and Submissions

- [6] The Representative testified that he has received numerous tenant complaints about flocks of birds accumulating on the Residential Property due to the Tenant continuously feeding them. The Representative testified that the birds have caused damage to the roof of the building, and their droppings have caused damage to the paint of cars in the parking lot belonging to other tenants.
- [7] The Representative submitted text message exchanges with the Tenant. These messages demonstrated that the Tenant was warned multiple times between December 2022 and May 2023 to stop feeding birds around the Residential Property as it had raised complaints due to damaging the paint of cars in the parking lot. The messages showed that the Tenant advised she would stop feeding the birds, but she did not do so.
- [8] The Representative's witness, a bylaw enforcement officer, testified that he has received numerous complaints about the Tenant feeding birds at the Residential Property. He testified that he has spoken with the Tenant multiple times about ceasing to feed the birds, to no avail.

Tenant's Evidence and Submissions

- [9] The Tenant acknowledged feeding birds on the Residential Property, even after being instructed by the property manager and by-law enforcement to stop. The Tenant further testified that she is unable to stop feeding the birds. However, she argued that there was minimal, if any, damage caused by the birds and that her continued feeding of them was insufficient to warrant an eviction.

- [10] The Tenant submitted letters of support from some other residents of the Residential Property supporting the Tenant's character and stating that they had not seen her cause problems at the Residential Property.

Analysis

- [11] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsubsection 61.(1)(d) of the *Act*, which states:

Landlord's notice for cause

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, or

(iii) put the landlord's property at significant risk

- [12] 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.
- [13] The Officer finds that the Representative has provided sufficient evidence to establish that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the Residential Property through continuous feeding of birds on the property, leading to damage of property.
- [14] The Officer finds that the Representative provided numerous warnings to the Tenant through text messages regarding complaints received by other tenants about the damage caused by the birds. The Officer finds that the Tenant advised multiple times that she would cease feeding the birds, but failed to do so.

Conclusion

- [15] The Notice is valid and the Application is denied.
- [16] The tenancy agreement shall terminate effective 11:59 p.m. on June 30, 2023. The Tenant 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 11:59 p.m. on June 30, 2023. The Tenants 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 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 **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.