

Introduction

- [1] On May 26, 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 Notice of Termination pursuant to subsection 61.(5) of the *Act*.
- [2] Attached to the Application was a Notice of Termination by Landlord (Form 4A) dated May 19, 2023, effective June 20, 2023, (the "Notice"). The Notice was personally served on the Tenants for the following reason:

You or someone you have allowed on the property have disturbed or endangered others;

You or someone you have allowed on the property have engaged in illegal activity on the property; and

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

- [3] The hearing was scheduled for June 22, 2023, when at that time a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and the Landlord's Representative participated.

Issue to be Decided

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

Summary of the Evidence

- [4] On or about October 20, 2022, the Tenant, S.A., and the Landlord entered into a tenancy agreement for the Residential Property which remains ongoing. The Residential Property is a one-bedroom apartment in a 14 unit building. Rent is \$800.00 and a security deposit of the same amount was paid.

Landlord's Evidence and Submissions

- [5] The Landlord's evidence is summarized as follows. K.H. stated that he has received several complaints about the Tenants smoking and that the Tenants are the only smokers who reside in the building. K.H. stated that despite warning letters being sent to the Tenants, the Tenants continue to smoke within the premises and he continues to receive complaints. K.H. also stated that he has issued verbal warnings to the Tenants. K.H. testified that he has placed no smoking signs within the building but that they continue to be ripped down. K.H. also testified that prior to the Tenants moving into the building there was no smoking issues and that there are other Tenants within the building who have breathing issues and that are scared and upset with this issue. K.H. provided documentary evidence of a "Schedule D" to the lease agreement which includes a "no smoking" term. K.H. also provided two personally signed statements/complaints from other Tenants with regards to the Tenants smoking, amongst other issues.
- [6] K.H. stated that the Tenants are allowing guests to enter into the building who will sleep in the laundry room, that he has received complaints about the Tenants apartment smelling like "meth cooking", and the Tenants tampering with the cameras. K.H. acknowledged that he has no direct evidence which can prove any of these additional allegations, rather only inferences from other Tenants.

Tenant's Evidence and Submissions

- [7] The Tenants' evidence is summarized as follows. S.A. stated that they smoke outside but not inside. S.A. testified that no one has spoken with them regarding the issues, other than just receiving a single paper warning related to the smoking. S.A. also testified that they were unaware that they couldn't smoke in the building when they moved in. S.A. denied letting people into the building to sleep in the laundry room and also denied cooking meth. S.A. also stated that despite the complaint from a Tenant related to a "drug deal", this was in fact her father delivering Tylenol after a dentist appointment where teeth were pulled. The Tenants' witness, N.G., testified that he provided the S.A. with Tylenol after her dentist appointment and that this was not a drug transaction.

Analysis

- [8] The Landlord served the Notice pursuant to section 61(1)(d),(e), and (h) of the *Act*, which states:

(61)(1) 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,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity...

(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;

- [9] The test to determine whether an interference upon the other lessees justifies termination of the rental agreement is whether the Tenant has "*significantly interfered or unreasonably disturbed*" other parties. Therefore, the perspective of the other lessees is vital. In the present matter the written statements of two other tenants establish that the Tenants' smoking is unreasonably disruptive and significantly interfering with drafters of the statements. The Landlord stated that the smoking was not an isolated incident and that it is also threatening the health and safety of other Tenants who have respiratory/health issues.
- [10] The Rental Officer notes that there was significant conflicting oral evidence between the parties and therefore placed increased weight on the written statements of the other Tenants' which corroborates the Landlord's evidence with respect to the smoking. Accordingly, the Rental Officer finds that the Tenant's behavior is of an extent which warrants eviction.
- [11] The Rental Officer also notes that there was a Schedule D to the lease agreement which prohibited smoking and that a warning was issued to the Tenants whom subsequently failed to comply with such notice, and therefore this material breach is also sufficient of warranting eviction. For these reasons, the Application is denied and the Notice is valid.
- [12] The Officer notes that there were other alleged causes for eviction in the Notice, however, the Officer does not need to make a determination on the merits for the other causes.

Conclusion

[13] The Notice is valid, and the Application is denied. The rental agreement between the parties shall terminate at 11:59 p.m. on July 2, 2023, and the Tenants shall be liable for rent up to and including this date. The Tenants shall vacate the Premises by this time and date.

IT IS THEREFORE ORDERED THAT

DATED at Charlottetown, Prince Edward Island, this 26th day of June, 2023.

(sgd.) Jeremy Coffin

Jeremy Coffin
Residential Tenancy Officer

NOTICERight 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.