

Introduction

- [1] On May 23, 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 4B) dated April 29, 2023, effective August 29, 2023 (the "Notice"). The Notice was served on the Tenant for the following reason:

I want possession of the rental unit for my child or parent

- [3] On June 27, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, a witness for the Tenant, and two Representatives of the Landlord participated.

Issue to be Decided

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

Summary of the Evidence

- [4] The Tenant and the Landlord entered into a written fixed-term one-year tenancy agreement for the Residential Property beginning on July 1, 2022. The Residential Property is a unit in a 12-unit apartment building. Rent is \$1,500.00 per month. A security deposit in the amount of \$1,500.00 was required and paid.

Landlord's Evidence and Submissions

- [5] The Representatives submitted that they are seeking to evict the Tenant in order to allow the mother of one of the Representatives to live in the unit rent-free. The Representatives testified that the mother is in her sixties, that she does not have an income, and that it is no longer feasible to pay the rent at her current accommodations.
- [6] The Representatives testified that the Tenant in particular was chosen to be evicted, as opposed to tenants of the other eleven units, because the mother prefers a ground floor, middle-unit, that does not face the woods.
- [7] The mother did not provide oral or written testimony. The Representatives testified that the mother's English would not be proficient enough to participate in the hearing.
- [8] The Representatives testified that the eviction is purely a result of the mother needing the unit, and not as a result of any dispute between the parties.
- [9] The Representatives further testified that the Residential Property is owned by a corporation of which they are the sole shareholders.

Tenant's Evidence and Submissions

- [10] The Tenant submitted that she is not being evicted in good faith, that the eviction is unfair treatment based on the Tenant pursuing a slip and fall claim on the Residential Property, and that the evidence does not establish that the mother intends to move into the Residential Property.

- [11] The Tenant testified that she has been mistreated since suffering a broken arm in a slip and fall on the Residential Property on January 13, 2023. The Tenant testified that she contacted the Representatives about the Landlord's insurance liability and that the Landlord was hesitant to provide the information. The Tenant further testifies that a few weeks later she was contacted about purported housekeeping issues, but other tenants were not held to the same standard.
- [12] The Tenant submitted into evidence a "Notice to End Tenancy" form she received from the Landlord, dated March 29, 2023. This notice stated that the Tenant's lease agreement period had ended and that the Tenant must vacate the unit by June 30, 2023. It was later agreed upon between the parties that this notice was not valid. The Tenant submitted that this was further evidence of her being "picked on" by the Representatives.
- [13] The Tenant submitted email records showing an email sent to the Tenant from the Representatives on April 23, 2023, indicating that the Representatives require the Tenant to vacate the unit by August 29, 2023, for "personal reasons".
- [14] The Tenant further submitted that the choice to evict her from her unit was unreasonable, given that there are other tenants who are single, younger, without pets, and without health issues.

Analysis

- [15] The Landlord's reasons for terminating the tenancy agreement are pursuant to subsubsection 62.(1)(c) 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

(c) a child, parent or a dependent of the landlord or the landlord's spouse

- [16] 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.
- [17] The Officer finds that the Landlord of the Residential Property is a corporation. As a corporate entity, it is unable to evict the Tenant for possession of the rental unit by the mother of one of the Representatives.
- [18] Subsection 62.(1) of the Act restricts the ability of a landlord to evict a tenant for landlord's use of property for a "landlord who is an individual". The Officer finds that this section of the Act applies only to landlords who are natural persons, and excludes corporations from its application.
- [19] Subsection 62.(1) of the Act allows a landlord to terminate a rental agreement due to occupation of the rental unit by the landlord, their spouse, children, parents or a person providing care service. Corporations do not have family members. The Act does not include a shareholder, director, officer or a family member of a shareholder, director or officer in the list of eligible people who may occupy a rental unit pursuant to subsection 62.(1).
- [20] As a result, the Officer finds that a landlord must be a natural person in order to terminate a rental agreement for landlord's occupation. The Landlord, a numbered company, is a corporation and a corporation cannot terminate a rental agreement pursuant to sub-subsection 62.(1) of the Act.

- [21] In the alternative that the Landlord was not barred as a corporation from evicting the Tenant under subsection 62.(1) of the *Act*, the Officer finds based on the totality of the evidence that the Representatives have not presented evidence to establish that the eviction is in good faith.
- [22] Therefore, the Officer finds that the Landlord has failed to establish, on a balance of probabilities, valid grounds to terminate the tenancy agreement under subsection 62.(1) of the *Act*. The Application is allowed and the Notice is invalid.

Conclusion

- [23] The Application is allowed and the Notice is invalid.
- [24] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The Application is allowed and the Notice is invalid.
- B. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 28th 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.