

Introduction

- [1] On June 12, 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*, and seeking a finding that the Landlord unlawfully entered the Residential Property, pursuant to subsection 22.(c) of the *Act*.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4A) dated June 8, 2023, effective July 7, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons, pursuant to s. 61.(1)(i) and (k) of the *Act*:
- i) *You have failed to comply with a material term of the tenancy agreement; and*
- k) *You have knowingly given false information about the rental unit.*
- [3] On June 8, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. On June 12, 2023, the Tenant served the Application on the Landlord by posting it on the Landlord's door.
- [4] On July 4, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and Landlord participated in the hearing.

Issue to be Decided

- i. Does the Tenant have to vacate the Residential Property due to the Notice?
- ii. Did the Landlord enter the Residential Property unlawfully?

Summary of the Evidence

- [5] On January 12, 2020, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for a rental unit, commencing February 1, 2020. On May 1, 2022 the Tenant and Landlord entered a second written fixed-term tenancy agreement for a different rental unit in the same building, commencing May 1, 2022. The tenancy agreement currently operated on a month-to-month basis.
- [6] The Residential Property is a rental unit situated in a 7-unit apartment building. Rent is \$700.00 per month due on the first day of the month. A security deposit of \$300.00 was required and paid for the first unit, and carried over to apply to the second unit.

Landlord's Evidence and Submissions

- [7] The Landlord submitted the tenancy agreement with the Tenant, which included a clause prohibiting pets, except at the discretion of the Landlord. The Landlord testified that the Tenant was given temporary permission in January of 2020 to keep a cat at the Residential Property while the cat's owner was travelling abroad.
- [8] The Landlord testified that the Tenant was unsuccessful in rehoming the cat. The impact of Covid further prevented rehoming. In May of 2021, the Landlord informed the Tenant that he could keep the one cat permanently as a special exception to the tenancy agreement.
- [9] The Landlord testified that the Tenant and his cat vacated the rental unit on May 12, 2021 in order to occupy a different unit in the same building. The Landlord testified that there were no cleanliness issues found with the unit after the Tenant and his cat vacated.

- [10] The Landlord testified on July 9, 2022 that the Tenant brought home a new kitten and showed it to the Landlord. The Landlord told the Tenant that a second cat is not allowed and that it must be rehomed, to which the Tenant agreed.
- [11] On either June 1, or June 2, 2023, the Tenant called the Landlord, saying that the backdoor was hard to open and close. The Landlord testified that he told the Tenant that he would take a look at it as soon as he could, to which the Tenant said "OK".
- [12] The Landlord testified that on June 5, 2023, he went to the Residential Property to fix the door. He testified that he saw two cats, one of which he recognized as the Tenant's original cat. The Landlord testified that he was told by another tenant that the second cat also belonged to the Tenant. The Landlord testified that he opened the door, realized he did not have the tools to fix it, and went to leave.
- [13] The Landlord testified that he spoke on the phone with the Tenant about entering the Residential Property, then the Tenant arrived in the parking lot shortly after. The Landlord testified that he confronted the Tenant about having the second cat and an argument ensued.
- [14] The Landlord testified that the Tenant was told to keep his cat only in his unit, but the Tenant allows the cats to use the hallway of the building. The Landlord testified that the cats have caused odours in the hallway.
- [15] The Landlord testified that other cats have been permitted to stay in the building and that there are currently two other cats in other units which have permission to reside in the building.

Tenant's Evidence and Submissions

- [16] The Tenant testified that he came into possession of the first cat when his friend was leaving the country and needed someone to take care of his cat. The Tenant testified that the owner of the cat died abroad. The Tenant testified that he received permission to keep the cat at the Residential Property temporarily, but was instructed to have it rehomed. The father of the cat's owner was originally going to take the cat, but did not after he found out he was allergic to the cat. The Tenant was permitted to keep the cat permanently in May of 2021.
- [17] The Tenant testified that he had been under the impression he was allowed to keep cats in general, not just a single cat, in the Residential Property. The Tenant testified that on June 9, 2022, he brought home a new kitten and eagerly showed it to the Landlord, who then told him he could not keep it.
- [18] The Tenant testified that he followed the Landlord's instructions and arranged to have the second cat stay at a friend's house, however the friend moved away in May of 2023, so he brought the second cat to stay at the Residential Property.
- [19] The Tenant testified that on June 1, or June 2, 2023, he phoned the Landlord about the backdoor being difficult to open and close, to which the Landlord said he would get back to him about. On June 5, 2023, the Tenant testified that he received notification from his surveillance system that the Landlord entered the unit. The Tenant testified that he never gave permission for the Landlord to enter the unit. The Tenant testified that he phoned the Landlord about entering the unit and came to the parking lot where he argued with the Landlord.
- [20] The Tenant testified that he is unwilling to get rid of the second cat, and believes he is receiving unfair treatment compared with other tenants.

- [21] The Tenant testified that he never lets the cats in the hallway. He further testified that the cats are let outdoors by the open backdoor window on the fire escape for most of the year and that in the winter the cats stay permanently in the unit, thereby never having a reason for them to use the hallway.
- [22] The Tenant testified that the cats have caused no damage or detectable odours, and that he has not received any complaints from other tenants.

Analysis

Notice of Termination

- [23] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsections 61.(1)(h) and (j) of the *Act*, which state:

Landlord's notice for cause

(1) *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*

(j) *the tenant knowingly gives false information about the residential property to a prospective tenant, a purchaser viewing the residential property or another person;*

- [24] The Officer notes that sub-subsection 61.(1)(j) of the *Act* is inapplicable to this matter as it is not alleged that the tenant gave false information about the residential property itself, or to an individual contemplated in the provision.
- [25] 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.
- [26] The Officer finds that the Tenant failed to comply with a material term of the tenancy agreement, namely, possessing a cat in the Residential Property without permission, and failed to correct this.
- [27] However, the Officer finds that the presence of a second cat in the Residential Property is insufficient to warrant eviction. The Officer finds that the Landlord has not provided sufficient evidence to establish that the presence of the second cat in the Residential Property caused any damage to the premises or disturbed other tenants.
- [28] The Officer notes that multiple tenants have been permitted to keep cats in units in the building. The Officer further notes that the Landlord found no cleanliness issues when the Tenant and his cat changed units within the building in May of 2021. The Officer finds that based on the totality of the evidence, the Tenant's breach of the pet provision of the tenancy agreement does not justify eviction.
- [29] The Officer reminds the Tenant that the Landlord will not tolerate any further pets, and that all pets must be diligently looked after and managed so as to avoid any damage to property or nuisance to other tenants.

Unlawful Landlord Entry

- [30] The Tenant's Application for a finding that the Landlord unlawfully entered the Residential Property are pursuant to subsection 22.(c) of the Act, which states:

Tenant's right to quiet enjoyment

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.*

- [31] A Landlord may enter a rental unit for a variety of reasons listed in section 23 of the Act, including if given permission by the tenant, pursuant to subsection 23.(a) of the Act, which states:

Landlord's right to enter rental unit restricted

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

- (a) the tenant gives permission at the time of the entry or not more than 10 days before the entry*

- [32] The Officer notes that in a dispute over unlawful entry by the Landlord, it is the Tenant's burden or onus to prove, on a balance of probabilities, that the Landlord entered the Residential Property unlawfully.
- [33] The Officer finds that the Tenant has not provided sufficient evidence to establish that the Landlord entered the Residential Property unlawfully.
- [34] The Officer finds that the Landlord was attempting to make a repair requested by the Tenant and was given permission to do so by the Tenant.

Conclusion

- [35] The Notice of Termination is invalid and the Application is allowed in part.
- [36] The tenancy agreement shall continue in full force and effect.

IT IS THEREFORE ORDERED THAT

- A. The tenancy agreement shall continue in full force and effect.

DATED at Charlottetown, Prince Edward Island, this 5th day of July, 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.