

Introduction

- [1] On June 1, 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 4A) dated May 31, 2023, effective July 30, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons, pursuant to sub-subsection 61.(1)(i) of the Act:
- (i) *You have failed to comply with a material term of the tenancy agreement.*
- [3] On May 31, 2023, the Landlord served the Notice on the Tenant by hand delivery. On June 1, 2023, the Tenant served the Application on the Landlord by hand delivery.
- [4] On July 7, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and 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 2008, the Tenant and the Landlord entered into a written month-to-month tenancy agreement for the Residential Property. The Tenant recalls the move-in date as being December 31, 2008. The Representative recalls the move-in date as being November 14, 2008.
- [6] The Residential Property is a rental unit situated in a 49-unit apartment building. Rent is \$775.00 per month. A security deposit of \$200.00 was required and paid for the first unit, and carried over to apply to the second unit.

Landlord's Evidence and Submissions

- [7] The Representative testified that the Tenant has been known for years to not maintain the Residential Property and has allowed it to become very cluttered. The Representative testified that complaints led to an inspection of the Residential Property by the Charlottetown Fire Department. The Representative submitted into evidence a hazard compliance order, dated May 19, 2021, ordering the remedy of multiple fire hazard violations. The Representative testified that this was in reference to the Tenant's maintenance of the Residential Property. The Representative submitted written notice to the Tenant, dated May 26, 2021, demanding that the violations be remedied.
- [8] The Representative testified that the Tenant requested that a window be repaired in March of 2023. The Representative testified that he was unable to have someone repair the window as the enormous amount of clutter made accessing the window impossible. The Representative testified that the Residential Property was in an extremely unclean, cluttered, odorous, and unlivable condition.
- [9] The Representative testified that in March of 2023, the Tenant was directed to clean the Residential Property, and that an inspection would be performed again in a month's time where if the Residential Property was not cleaned, the Tenant would be evicted. The Representative submitted letters provided to the Tenant dated March 9, 2023 and April 19, 2023, directing the Tenant to clean the Residential Property or face eviction. The Representative testified that the Tenant was warned about her need to clean the unit at least six times.

- [10] The Representative testified that the Tenant did not clean the unit when directed, and she was given extensions of another month, then another week. The inspection was performed on May 31, 2023. The Representative submitted the accompanying Landlord Condition Inspection Report. This report stated that the unit was unlivable, there was food and garbage throughout, and that there was no way to walk around the unit given the clutter.
- [11] The Representative testified that he further inspected the Residential Property on July 6, 2023, after the Tenant had the unit cleaned. The Representative noted improvements, but maintained that the Residential Property is nowhere near the level of cleanliness required. The Representative testified that there are lingering smells, items are piled high in certain areas, and the Representative expects to have to need to perform significant remedial repairs.

Tenant's Evidence and Submissions

- [12] The Tenant testified that she has a hoarding problem, for which she is seeking help. The Tenant acknowledged that the Residential Property had become unclean, but argued that she was not given enough time to clean it. The Tenant testified that previous efforts to clean the Residential Property were hampered by not being able to open a window, making the unit hot and unfit to work in.
- [13] The Tenant testified that after receiving the Notice of termination, she hired a company to help clean and declutter the Residential Property. The Tenant submitted photos from inside the Residential Property following the cleaning efforts. The Tenant testified that she would maintain the Residential Property at the current level of cleanliness.

Analysis

- [14] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsection 61.(1)(h) of the Act, which states:

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

- [15] Tenants are responsible for ordinary cleanliness of units, pursuant to section 28.(3) of the statutory conditions of the Standard Form Tenancy Agreement, which states:

Tenant responsible for ordinary cleanliness

(3) A tenant is responsible for

(a) ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and

(b) proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.

- [16] The Officer notes that in such matters where there is a dispute over a Notice of Termination by the 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 Tenant failed to comply with a material term of the tenancy agreement, namely, ensuring ordinary cleanliness of the Residential Property, and failed to correct this within a reasonable time.
- [18] The Officer notes that the unit has been maintained in a state of serious disorder for years, despite being made aware of the issues. The Officer notes the Hazard Compliance Order pertaining to the unit issued by the Charlottetown Fire Department, dated May 19, 2021. The Landlord provided the Tenant with numerous opportunities, including written warnings, to rectify the issue before serving the Notice of termination. The Officer finds that the Landlord only sought the eviction when it became clear that all other efforts to motivate the Tenant to clean the unit were ineffective.
- [19] The Officer further finds that while the Tenant hired a company to clean the unit after receiving the Notice of termination, this was insufficient. The Residential Property remains in a state which is below the standard of ordinary cleanliness. The Officer finds that based on the past inaction of the Tenant, the Officer finds it unlikely the Tenant will maintain the Residential Property in an ordinarily clean state going forward.
- [20] Based on the totality of the evidence, the Officer finds that the Notice is valid and the Application is denied.

Conclusion

- [21] The Notice is valid and the Application is denied.
- [22] The tenancy agreement shall terminate effective 11:59 p.m. on July 31, 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 July 31, 2023. The Tenant 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 10th 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 **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.