

## Introduction

- [1] On June 2, 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 June 30, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons:

*You or someone you have allowed on the property has caused damage to the rental unit;*

*and*

*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 posting it on the Tenant's door. On June 4, 2023, the Tenant emailed a copy of the Application to the Landlord.
- [4] On June 20, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Tenant and 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

- [5] On February 13, 2022, the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of an apartment in an eight-unit apartment building. Rent is \$1,250.00 per month due on the first day of the month. A security deposit of \$1,250.00 was paid.

## Landlord's Evidence and Submissions

- [6] The Landlord stated the Tenant has caused damage to the bathroom in the Residential Property. The Landlord submitted a photo into evidence of the bathroom before the Tenant moved in. The Landlord submitted recent photos of the bathroom into evidence. The Landlord stated the recent photos show the damage the Tenant has caused to the bathroom.
- [7] The Landlord stated the Tenant is not using a shower curtain and water is spilling onto the bathroom floor which is causing moisture damage. The Tenant's bidet is also causing water to spill onto the floor causing moisture damage. Water has been leaking into the basement from the Tenant's bathroom.
- [8] The Landlord stated he has warned the Tenant several times about the moisture and water damage in the bathroom but the Tenant has not changed their behaviour. The Landlord obtained an estimate for the cost to repair the bathroom and the estimate was \$7,130.00. The Landlord submitted a copy of the estimate into evidence.
- [9] The Landlord also stated the Tenant indicated on the Application that the Tenant was doing business out of the Residential Property. The Landlord stated he did not give the Tenant permission to have a business in the unit.

### Tenant's Evidence and Submissions

- [10] The Tenant stated the Residential Property is old and not in good condition. He stated he does not use the bidet to wash the floor. The Tenant stated moisture in the bathroom goes up to the ceiling and then water gets on the floor. He stated he did not cause water to leak into the basement. The Tenant stated he is not running his business from the property and he only uses the mailing address of the Residential Property for his business which is located elsewhere.

### Analysis

- [11] Subsections 61.(1)(f) and (h) of the *Act* state:

*A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

*(f) the tenant or a person permitted on the residential property by the tenant has caused unreasonable damage to a rental unit or the residential property.*

*(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.*

- [12] With regards to subsection 61.(1)(h) of the *Act*, the Landlord stated the Tenant is operating a business out of the Residential Property, which was not agreed to as a part of the tenancy agreement. The Tenant stated he just uses the address of the Residential Property for mail for his business, which is located elsewhere. Based on the totality of the evidence, the Officer finds that the Landlord has not proven, on a balance of probabilities, that the Tenant has breached subsection 61.(1)(h) of the *Act*.

[13]

- [14] The Landlord submitted photos of the bathroom from before the Tenant moved into the Residential Property and recent photographs of the condition of the bathroom. The Landlord submitted a copy of an invoice which states it will cost \$7,130.00 to repair the bathroom. The Landlord stated he has spoken to the Tenant on several occasions about the moisture and water damage in the bathroom but the Tenant has not changed their behaviour.

- [15] The Officer finds that based on the totality of the evidence the Landlord has provided sufficient evidence to establish, on a balance of probabilities, that the Tenant has breached subsection 61.(1)(f) of the *Act*, by causing damage to the bathroom of the Residential Property, and justifies termination of the tenancy agreement.

### Conclusion

- [16] The Notice is valid and the Application is denied.
- [17] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant and all occupants 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 5:00 p.m. on July 31, 2023. The Tenant and all occupants 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 11th day of July, 2023.

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(sgd.) Mitchell King  
Mitchell King  
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.