

Introduction

- [1] On May 29, 2023, the Landlord filed a Landlord Application to Determine Dispute (Form 2B) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is seeking an earlier termination of the tenancy agreement.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated May 29, 2023, effective June 28, 2023, (the "Notice"). The Notice was served on the Tenant for the following reason:

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

- [3] The Particulars on the Notice stated:

"[The Tenant] violated Section 23 (c) of the Residential Tenancy Act on Saturday May 27, 2023. She obstructed and cancelled my realtor from showing to clients. I'm requesting an early termination of her tenancy agreement."

- [4] On May 29, 2023, the Landlord served the Notice and Application on the Tenant by posting it on the Tenant's door.
- [5] On June 26, 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?
- ii. Is an earlier termination of the tenancy agreement warranted?

Summary of the Evidence

- [6] In February 2021 the Tenant and the Landlord entered into a written fixed-term tenancy agreement for the Residential Property. The Residential Property consists of one half of a duplex. Rent is \$1,250.00 per month due on the first day of the month. A security deposit of \$600.00 was paid.

Landlord's Evidence and Submissions

- [7] The Landlord stated on May 24, 2023, his relator K.Q., and a photographer, attended the Residential Property to take photos of the property as the Landlord was putting the property up for sale. The Landlord stated on May 27, 2023, there were three real estate showings scheduled at the Residential Property.
- [8] The Landlord stated on the day of the showings the Tenant contacted him and K.Q. and stated she would not allow the showings that day. The Tenant was upset because there were photos which showed her bra and a sign with her name on it posted on the realtor's website. K.Q. stated the photographs were removed from the website once he was made aware of the issues.
- [9] The Landlord stated there was another real estate showing on June 2, 2023, at 5:00 p.m. The Landlord stated that the buyer's realtor arrived at 5:15 p.m. and the Tenant refused to allow the showing because the realtor was supposed to be there at 5:00 p.m. and they were late.
- [10] The Landlord stated on June 3, 2023, he gave the Tenant notice that there would be a showing on June 5, 2023. The Tenant messaged the Landlord stating that if the realtor and buyers were not at the Residential Property within 15 minutes of the stated time then the showing would have to be rescheduled. The Landlord submitted copies of the Tenant's messages into evidence. The Landlord stated the Tenant's behaviour is a breach of section 23.(c) of the Act.

Tenant's Evidence and Submissions

- [11] The Tenant stated she has to give the Landlord timeframes for appointments because of issues she has had in the past. She stated posting photos showing her bra and a sign with her name on it are unprofessional. After she saw the photographs on the realtor's website she needed time to process the issue so she cancelled the showings for that day. The Tenant stated on June 2, 2023, the buyer's realtor was not at the Residential Property at 5:00 p.m. as was scheduled so she considered that a missed appointment. She stated her father had already left and she did not feel comfortable having the showing without him there.
- [12] J.M. stated on May 27, 2023, the Tenant saw the photos of the bra and the sign on the realtor's website. J.M. stated the Tenant only denied access to the realtor for one day while the Tenant processed the issue of the photos. J.M. stated on June 2, 2023, the realtor arrived late for the showing so the Tenant had the right to deny them access.

Analysis

- [13] With regards to the reason for the Notice, subsection 61.(1)(h) of the Act states:

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.

- [14] Subsection 22.(c) of the Act states:

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.

- [15] The Landlord stated the Tenant has breached subsection 23.(c) of the Act which states:

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

(c) the landlord or, with the written authorization of the landlord, the landlord's agent, requires access to the rental unit to allow a potential purchaser to view the rental unit and the landlord has given written notice to the tenant at least 24 hours before the time of entry.

- [16] The Officer notes that the Act does not give the Tenant the ability to restrict the Landlord's agent (a realtor) access to the rental unit to allow a potential purchaser to view the rental unit if the Landlord has provided the Tenant proper notice, regardless of the Tenant's reasons for doing so. In this case, the Tenant is not disputing the notice period provided by the Landlord.

- [17] The *Act* also requires a landlord to provide a tenant a written notice or warning if there is a material breach of the tenancy agreement. The landlord may then end a tenancy if the tenant has not corrected the situation within a reasonable time after the written notice. The Officer notes that copies of the Tenant's messages, from after the cancelled May 27, 2023, showings, are sufficient to show that the Landlord had notified the Tenant of the material breach of the tenancy agreement.
- [18] The Officer notes that the Tenant had not corrected the situation within a reasonable time after the Landlord has given her notice to do so. The Tenant did not allow a realtor and a buyer access to the Residential Property on June 2, 2023, after she was given notice of the real-estate showing. The Tenant also attempted to tell the Landlord that if the realtor was late for the June 5, 2023, showing that the Tenant had the right to deny them access.
- [19] The Officer finds that the Landlord has provided sufficient evidence, on a balance of probabilities, to establish that the Tenant has breached a material term of the tenancy agreement by restricting the Landlord's agent access to the Residential Property.
- [20] With regards to an earlier termination of the tenancy agreement, because the vacate date on the Notice (June 28, 2023) has already passed, the Officer does not need to make a determination if an earlier termination date is warranted.

Conclusion

- [21] The Application is allowed in part.
- [22] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 19, 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 19, 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 12th day of July, 2023.

(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.