

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 62.(4) of the Act.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4B) dated May 19, 2023, effective October 1, 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 May 19, 2023, the Representative for the Landlord served the Tenant with the Notice by hand delivery. On June 2, 2023, the Tenant served the Landlord with the Application by registered mail.
- [4] On July 11, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant and a Representative for 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] The Tenant occupied the Residential Property in January of 2011. The Residential Property is a unit in a four-unit apartment building. The Landlord purchased the apartment building in December of 2020. The tenancy agreement between the Tenant and Landlord operates on a month-to-month basis. Rent is \$630.00 per month. A security deposit in the amount of \$300.00 was required and paid.

Tenant's Evidence and Submissions

- [6] The Tenant testified that she will not have a place to live if she is evicted and that all efforts to secure alternative accommodations have been unsuccessful. The Tenant testified that she does not want to leave the Residential Property and is very concerned she will not be able to find another place to live.
- [7] The Tenant further suggested that the eviction is a result of the Landlord having been unsuccessful in attempting to raise the rent in November of 2022.

Landlord's Evidence and Submissions

- [8] The Representative testified that the apartment building is owned by a corporation, of which he and his wife are the sole shareholders.
- [9] The Representative testified that he is seeking to terminate the tenancy agreement in order to allow his son to live in the Residential Property. The Representative testified that it is time for his son to gain more independence and move out. The Representative further testified that the Residential Property in particular is a good fit for his son to occupy as his son is single and this unit is the only one-bedroom apartment.
- [10] The Representative testified that he did not know how long the son would reside in the Residential Property, but that it would definitely be for longer than one year. The Representative testified that the decision to evict for personal use is entirely unrelated from the unsuccessful attempt to increase rent in November of 2022.

- [11] The son of the Representative did not provide oral testimony, but provided an affidavit stating his intention to occupy the Residential Property on October 1, 2023.

Analysis

- [12] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsection 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

- [13] 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.
- [14] 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 son of the Representative.
- [15] 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.
- [16] 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).
- [17] 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 is a corporation and a corporation cannot terminate a rental agreement pursuant to subsection 62.(1) of the *Act*.
- [18] 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

- [19] The Application is allowed and the Notice is invalid.
- [20] 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 13th 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.