

## **Introduction**

- [1] On June 13, 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 Notice of Termination pursuant to subsection 63.(6) of the *Act*.
- [2] Attached to the Application was a Notice of Termination by Landlord (Form 4B) dated June 9, 2023, effective August 12, 2023, (the "Notice"). The Notice was personally served on the Tenants for the following reason:
- A buyer wants possession of the rental unit for: the buyer.*
- [3] The hearing was scheduled for July 6, 2023, when at that time 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**

- [4] On or about February 22, 2023, the Tenant and the Landlord entered into a fixed term tenancy agreement for the Residential Property which remains ongoing, and has a scheduled end date of February 22, 2024. The Residential Property is a four-bedroom single family dwelling. Rent is \$2,800.00 and a security deposit of the same amount was paid.

### **Landlord's Evidence and Submissions**

- [5] The Landlord's evidence is summarized as follows. The Landlord stated that she cannot afford to continue operating the rental because she is operating at a significant loss and therefore must sell the property. The Landlord argued that as the owner she has the right to sell the property at any time. The Landlord testified that she submitted all the required sale documents to demonstrate the sale, closing date, and owner occupation given that the prospective purchaser wants to live in the property themselves. The Landlord stated that the closing is scheduled to proceed on August 12, 2023.
- [6] Included within the Landlord's evidence was a statutory declaration by the purchaser affirming his intention to reside in the premises subsequent to the purchase. Also enclosed was a copy of the agreement of purchase and sale ("APS") between the purchaser and the Landlord.

### **Tenant's Evidence and Submissions**

- [7] The Tenants' evidence is summarized as follows. The Tenant argued that a one-year contract exists and therefore it shall not end before February 2024. The Tenant stated that he and his family are new to Canada and having to move at this time would be extremely difficult. The Tenant also stated that if he had known that the premises would be placed for sale he would have signed a lease for a different property. The Tenant further stated that this will affect his children's school zoning and that he has no time to look for alternative rentals.

## **Analysis**

- [8] The Landlord served the Notice pursuant to section 63(1)(a) of the *Act*, which states:

**63. Landlord's notice when purchaser personally requires unit**

(1) A landlord of a residential property that contains fewer than three rental units who has entered into an agreement of purchase and sale of the residential property may, on behalf of the purchaser, give the tenant of a rental unit in the residential property a notice of termination if the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation by

(a) the purchaser;

**Affidavit required**

(3) A notice of termination under subsection (1) or (2) is valid only if the tenant has been provided with a sworn affidavit certifying that the purchaser in good faith requires possession of the rental unit for a purpose set out in subsection (1) or (2).

**Period of notice**

(4) The date for termination specified in a notice of termination given under subsection (1) or (2) shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term, and

(a) for the purposes of clauses(1)(a) and (2)(a), shall be at least two months after the notice is given; and

[9] The Rental Officer reviewed the documents provided by the Landlord, including the APS and Statutory Declaration, and finds that the Purchaser is operating in good faith and requires possession of the rental property for the purposes of residential occupation.

[10] Section 63(4)<sup>1</sup> of the *Act* instructs for matters of where a purchaser is personally requiring a rental unit for residential occupation, that the date for termination of a current Tenant's fixed term rental shall not be earlier the end of the term – the same applies for a Landlord seeking own use of a residential property<sup>2</sup>.

[11] For further clarity, "fixed term", is defined at Section 1(g) of the *Act*, which states:

**"fixed-term tenancy"** means a tenancy under a tenancy agreement that specifies the date on which the term ends;

[12] In this matter before the Rental Officer, the tenancy agreement is for a "fixed term" – starting on February 22, 2023 and concluding on February 22, 2024. Therefore, the Rental Officer finds that the Landlord and the Purchaser failed to apply the proper termination date in the Notice served to the Tenant, and therefore the Rental Officer amends the termination date to February 22, 2024.

[13] The Rental Officer notes that the *Act* does not bar the sale of the residential property, rather it extends the date that a purchaser may reside in the premises until the end of the "fixed term". The Legislature intentionally decided to insert this verbiage (and definition) in the drafting of its new tenancy legislation and the Rental Officer must apply the *Act* as drafted. While this section may pose inherent challenges for Landlords and purchasers of residential property, the preamble of the *Act* informs that sections such as these were purposefully inserted by the drafters to maintain adequate levels of rental housing in the province. It is therefore incumbent on real estate agents and lawyers alike to consider the practical effects of section 63(4) when drafting an APS should a purchaser require immediate occupation of a premises.

<sup>1</sup> S63(4) The date for termination specified in a notice of termination given under subsection (1) or (2) shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term [emphasis added]

<sup>2</sup> Section 62(2) of the *Act*.

[14] In addition to the foregoing, the Rental Officer wishes to highlight that at the time of termination the Tenant may also be entitled to compensation, payable by the property owner pursuant to section 72 of the *Act*, which states:

**72. Compensation for Personal Use**

*A landlord **shall** compensate a tenant who receives a notice of termination of a tenancy under section 62 or 63 in an amount equal to **one month's rent plus reasonable moving expenses** in accordance with the regulations or offer the tenant another rental unit acceptable to the tenant. [emphasis added]*

**Conclusion**

[15] The Application is allowed and the termination date of the Notice shall be extended to February 22, 2024, unless the parties can arrive at a mutually agreeable solution to expedite this date.

**IT IS THEREFORE ORDERED THAT**

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

**DATED** at Charlottetown, Prince Edward Island, this 14th day of July, 2023.

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(sgd.) Jeremy R. Coffin

Jeremy R. Coffin  
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.