

Introduction

- [1] On June 2, 2023, the Occupants filed a Tenant Application to Determine Dispute (Form 2A) (the "Application") with the Residential Tenancy Office (the "Rental Office"). The Application is disputing an Eviction Notice pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated May 31, 2023, effective June 30, 2023, (the "Notice"). The Notice was served on the Occupants for the following reasons:
- You have not paid your rent in the amount of \$1050.00;*
You are repeatedly late in paying rent;
You or someone you have allowed on the property have disturbed or endangered others;
You or someone you have allowed on the property has caused damage to the rental unit;
You have not repaired the damage to the rental unit;
There is an order requiring the rental unit to be vacated;
Our employment relationship has ended.
- [3] On May 31, 2023, the Property Owner served the Notice on the Occupants by emailing it to the Occupants. On June 2, 2023, the Occupants served a copy of the Application to the Property Owner in person.
- [4] On July 4, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). Both the Property Owner and the Occupants participated.

Issues to be Decided

- i. Is there a tenancy agreement between the parties?
- ii. If there is a tenancy agreement, do the Occupants have to vacate the Residential Property pursuant to the Notice?

Summary of the Evidence

- [5] The Property Owner is the mother of R.G. and J.M. is R.G.'s partner. In January 2023 the parties entered into a verbal agreement for the Occupants to live in the Residential Property. The parties agreed that the Occupants would pay the Property Owner \$600.00 per month. No security deposit was required or paid.

Property Owner's Evidence and Submissions

- [6] The Property Owner testified she agreed to allow the Occupants to live in her basement as a family relationship and not as a landlord / tenant relationship. N.D. stated there was no tenancy agreement in place.
- [7] N.D. stated the Occupants owe rent for March, May, and June, 2023, in the amount of \$600.00 x 3 = \$1,800.00. N.D. stated that R.G. threatened to punch the Property Owner in the mouth. N.D. stated there are some damages to a screen door and a toilet. N.D. stated the Property Owner wants to sell the Residential Property and she cannot put it up for sale until the Occupants move out of the basement.

Occupants' Evidence and Submissions

- [8] R.G. stated she moved into the Residential Property as a part of a family relationship with her mother and not as a landlord / tenant relationship. R.G. stated the Occupants agreed to pay the Property Owner \$600.00 per month while living in the Residential Property. R.G. stated she paid the Property Owner \$600.00 in January 2023. R.G. stated the Property Owner told her that the Occupants did not have to pay for February 2023 as the Occupants were saving money to move out. R.G. stated the Occupants have paid for March and April 2023. R.G. stated the Occupants are looking for another place to live.

Analysis

- [9] Sections 1.(h) and 1.(x) of the Act sets out the definitions of "landlord" and "tenant":

(h) "landlord", in relation to a rental unit, includes

(i) the owner of the rental unit, the owner's agent or another person who, on behalf of the owner,

*(A) permits occupation of the rental unit under a tenancy agreement, or
(B) exercises powers and performs duties under this Act or a tenancy agreement,*

(ii) the heirs, assigns, personal representatives and successors in title to the owner,

(iii) a person, other than a tenant occupying the rental unit, who

*(A) is entitled to possession of the rental unit, and
(B) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit, and*

(iv) a former landlord, as the context requires.

(x) "tenant" includes

(i) a person who is entitled to use or occupy a rental unit under a tenancy agreement,

(ii) the assigns and personal representative of a person referred to in subclause (i), and

(iii) when the context requires, a former or prospective tenant.

- [10] Section 1.(w) of the Act sets out the definition of "tenancy agreement":

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and the provision of services and facilities.

- [11] Based on the evidence and testimony provided by the parties the Officer finds that the intent of the agreement the parties entered into in January 2023 was not a "tenancy agreement" as defined by the Act. The Officer finds that this is an agreement between two family members and not an agreement between a "landlord" and a "tenant". As a result, the Officer does not have jurisdiction to determine this dispute through the Application.

Conclusion

[12] There is no tenancy agreement between the parties.

[13] The Rental Office does not have jurisdiction to determine this dispute through the Application.

IT IS THEREFORE ORDERED THAT

A. There is no tenancy agreement between the parties.

B. The Rental Office does not have jurisdiction to determine this dispute through the Application.

DATED at Charlottetown, Prince Edward Island, this 14th 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.