

Introduction

- [1] On June 11, 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 June 5, 2023, effective July 5, 2023, (the "Notice"). The Notice was served on the Tenant for the following reasons, pursuant to sub-subsection 14.(1)(a) of the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 ("*Rental of Residential Property Act*"):

You have failed to fulfill your responsibility for ordinary cleanliness of the interior of the residential premises or for damage caused by you or persons you permitted on the premises

- [3] On June 5, 2023, the Landlord served the Notice on the Tenant by posting it on the door of the Residential Property. Between June 11 and June 15, 2023, the Tenant served the Application on the Landlord by fax.
- [4] On July 11, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). One of the two Tenants and a Representative for the Landlord participated in the hearing.

Issue to be Decided

- i. Do the Tenants have to vacate the Residential Property due to the Notice?

Summary of the Evidence

- [5] The Tenant testified that she occupied the Residential Property around fourteen years ago. The Representative estimated that the Landlord acquired the building around five to six years ago. The Tenant and Landlord have a verbal tenancy agreement on a month-to-month basis.
- [6] The Residential Property is a rental unit situated in a six-unit apartment building. Rent is payable on the first of each month. The Landlord submitted that rent is in the amount of between \$550 and \$600. A security deposit of \$250.00 was required and paid when the Tenants first occupied the Residential Property.

Landlord's Evidence and Submissions

- [7] The Representative testified that the Tenant has failed to maintain the Residential Property to a standard of ordinary cleanliness. The Representative testified that the Tenants leave toys, bicycles, and other items strewn about the doorstep of the Residential Property and front yard. The Representative testified that he is concerned about the clutter diminishing the property value of the Residential Property.
- [8] The Representative testified that there have been numerous conversations with the Tenants over the course of several years regarding the clutter in front of the Residential Property and that the Tenants have previously committed to cleaning the front of the property. The Representative testified that he has not provided the Tenants with official written warnings of their need to maintain the outside of the Residential Property.
- [9] The Representative testified that he has variously observed the clutter reduce at times, but never fully go away and it soon after returns to its original state. The Representative testified that he does not want to remove the Tenants, but their failure to remedy the situation leaves no other choice.

- [10] The Representative submitted numerous photos of the Residential Property showing toys, bicycle parts and other items in front and to the side of the Residential Property.

Tenant's Evidence and Submissions

- [11] The Tenant testified that the Representative exaggerated the extent of the clutter. The Tenant testified that the clutter is largely contained to the doorstep and a little onto the next door neighbour's property.
- [12] The Tenant testified that both Tenants have not been able to make an effective cleanup of the Residential Property for a variety of reasons. The Tenant testified that she has tried to clean the clutter for some years, but cannot do it alone. The Tenant testified that her childcare duties make it very difficult to clean up the clutter. The Tenant testified that she has unsuccessfully requested that the Landlord bring a dumpster to the Residential Property. The Tenant testified that both Tenants do not drive, preventing them from being able to take items to the dump. The Tenant further testified that strangers leave items on the Residential Property, adding to the clutter.

Analysis

- [13] The Officer notes that the Form 4A Notice was made with the prior form applicable under the *Rental of Residential Property Act* prior to the enactment of the current *Act*.
- [14] The Officer notes the application of section 30 of the *Interpretation Act*, RSPEI 1988, c I-8 ("*Interpretation Act*") which states:

Effect of deviation from specified form

Where an enactment requires the use of a specified form, deviations from the form do not invalidate a form used if

- (a) the deviations do not affect the substance;*
- (b) the deviations are not likely to mislead; and*
- (c) the form used is organized in the same way or substantially the same way as the form the use of which is required.*

- [15] The Officer notes that the relevant section on the current Form 4A is clause (i), which states:

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

- [16] Clause (i) of the current Form 4A is pursuant to sub-subsection 61.(1)(h) of the *Act*, which states:

Landlord's notice for cause

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

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;*

- [17] Tenants are responsible for ordinary cleanliness of units as a material term of all tenancy agreements pursuant to section 28.(3) of the statutory conditions of the Standard Form Tenancy Agreement, which states:

Tenant responsible for ordinary cleanliness

(3) *A tenant is responsible for*

- (a) *ordinary cleanliness of the rental unit and all areas of the residential property used exclusively by the tenant, except to the extent that the tenancy agreement expressly requires the landlord to clean it; and*
- (b) *proper sorting and disposition of garbage or waste, compostable materials and recyclable materials of the tenant and any other person permitted in the rental unit by the tenant in accordance with applicable requirements.*

- [18] The Officer finds that while the Landlord did not use the proper form, the application of the *Interpretation Act* allows the Notice to be proceed under clause (i) of the current Form 4(A). The Officer finds that the Tenants were not prejudiced by the use of the incorrect form. The Officer finds that the Tenants were aware of the reasons for the Notice of termination and were given the opportunity to make full answer and defence.
- [19] The Officer finds that the Tenants have failed to maintain the Residential Property to a standard of ordinary cleanliness as required. The Officer finds that the testimony and photographic evidence submitted by the Representative establishes that the Residential Property is insufficiently maintained to meet the statutory conditions of the tenancy agreement. The Officer notes the Tenant's testimony, that she has attempted to clean the clutter for a number of years but is unable to clean the clutter alone, as indicative of the significance of the clutter.
- [20] The Officer finds that, while the Representative could not establish that written warnings were provided, numerous verbal warnings and conversations were had with the Tenants regarding cleaning the outside of the Residential Property. The Officer finds that the Tenants have been plainly aware of the cleanliness issues concerning the Residential Property for several years, but have failed to rectify the situation.
- [21] Based on the totality of the evidence, the Officer finds that the Notice is valid and the Application is denied.

Conclusion

- [22] The Notice is valid and the Application is denied.
- [23] The tenancy agreement shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant 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 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 17th 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 **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.