

Introduction

- [1] On June 12, 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 63.(6) of the Act.
- [2] Attached to the Application was a Landlord Notice of Termination (Form 4B) dated June 1, 2023, effective August 1, 2023 (the "Notice"). The Notice was served on the Tenant for the following reason:

A buyer wants possession of the rental unit for the buyer

- [3] The Tenant testified that on June 7, 2023, the Landlord served the Tenant with the Notice by posting it on the door of the Residential Property. The Tenant failed to serve the Application on the Landlord, however it was provided to the Landlord by the Rental Office via the Landlord's listed email on the Notice.
- [4] On July 13, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). One of the two Tenants participated. The Landlord did not participate.

Issue to be Decided

- i. Was the Landlord sufficiently served with the Application?
- ii. 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 2020. The Residential Property is one half of a duplex. The tenancy agreement between the Tenant and the Landlord began as a one-year fixed-term agreement and has since converted to a month-to-month agreement. Rent is \$1,695.00 per month. A security deposit was required and paid. The Tenant testified that to his best recollection the security deposit was in the amount of \$1,695.00

Landlord's Evidence and Submissions

- [6] The Landlord did not provide any written evidence or oral testimony.

Tenant's Evidence and Submissions

- [7] The Tenant testified that the Residential Property has not been sold. The Tenant testified that he was advised via text message on June 3, 2023 from the Landlord that the Landlord was considering selling the Residential Property. The Tenant testified that he received the Notice of termination on June 7, 2023, but the Notice was dated June 1, 2023.
- [8] The Tenant testified that he has not been informed on any details about a supposed purchase of the Residential Property. The Tenant further testified that he never received an affidavit from the supposed purchaser to state an intention to occupy the Residential Property.
- [9] The Tenant testified that a 'for-sale' sign was put up on the Residential Property on July 10, 2023. The Tenant further testified that the Landlord's realtor contacted the Tenant about scheduling a viewing of the Residential Property for July 15, 2023.

Analysis

I. Was the Landlord sufficiently served with the Application?

- [10] An applicant to the Director is required to serve the application on the other party pursuant to subsection 76.(2) and (3), which state:

Service

- (2) *A person who makes an application to the Director shall give a copy of the application to the other party in accordance with section 100 within five days of making the application.*

Failure to effect service

- (3) *If, at any time, the Director is of the opinion that a party has not been provided notice in accordance with section 100, the Director may order that the party be given notice and an opportunity to be heard.*

- [11] The Officer notes that the Tenant did not properly serve the Application on the Landlord. However, the Officer notes that the Landlord listed his contact email address on the Notice provided to the Tenant.

- [12] The notice of hearing and evidence package pertaining to the Application were sent by the Rental Office to the designated Landlord email address. Providing notice by email is one of the methods of acceptable service listed under sub-subsection 100(1)(d), which states:

Service of documents

- (1) *A document that is required or permitted under this Act to be given to or served on a person shall be given or served in one of the following ways:*

- (d) *sending the document electronically where*
- (i) *it is provided in the same or substantially the same form as the printed document,*
 - (ii) *the other party has provided an electronic address for receipt of documents, and*
 - (iii) *it is sent to that electronic address;*

- [13] Further, the Director may nonetheless deem a party sufficiently notified despite documents not being properly served, pursuant to subsection 100.(3) of the Act, which states:

Order deeming service

- (3) *Despite subsection (1), the Director may order that a document not served in accordance with subsection (1) was sufficiently given or served for the purpose of providing notice to an affected person under this Act*

- [14] The Officer finds that the Landlord was sufficiently notified of the Application and hearing by email.

II. Does the Tenant have to vacate the Residential Property due to the Notice?

- [15] The Landlord's reasons for terminating the tenancy agreement are pursuant to sub-subsection 63.(1)(a) of the *Act*, which states:

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*

- [16] A Landlord is required to provide a sworn affidavit from the purchaser when providing notice of termination for purchaser occupation pursuant to subsection 63.(3) of the *Act*, which states:

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).*

- [17] The Officer notes that in such matters where there is a dispute over a Notice of Termination by the Landlord, it is the Landlord's burden or onus to prove, on a balance of probabilities, any and all reasons alleged in the Notice.
- [18] Based on the undisputed testimony and evidence presented by Tenant, the Officer finds that the Landlord has failed to establish that a purchaser in good faith requires possession of the Residential Property for the purpose of purchaser occupation.
- [19] The Officer notes that the Landlord failed to provide an affidavit of the purchaser indicating that the purchaser in good faith requires possession of the Residential Property, as is required under subsection 63.(3) of the *Act*. The Officer further notes that there was no evidence provided by the Landlord of any purchase having occurred.
- [20] The Officer notes the Tenant's testimony of a 'for-sale' sign recently being erected at the Residential Property and the Landlord's realtor arranging for a viewing of the Residential Property as further confirmation that a purchase of the Residential Property has not occurred.
- [21] Therefore, the Officer finds that the Landlord has failed to establish, on a balance of probabilities, valid grounds to terminate the tenancy agreement under sub-subsection 63.(1)(a) of the *Act*. The Application is allowed and the Notice is invalid.

Conclusion

- [22] The Application is allowed and the Notice is invalid.
- [23] 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 18th 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.