

Introduction

- [1] On June 16, 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 an Eviction Notice pursuant to subsection 61.(5) of the Act.
- [2] Attached to the Application was an Eviction Notice (Form 4A) dated June 9, 2023, effective July 9, 2023, (the "Notice"). On June 9, 2023, the Landlord served the Notice on the Tenant by posting it on the Tenant's door. The Notice was served on the Tenant for the following reasons:

You or someone you have allowed on the property have disturbed or endangered others;

and

You have permitted an unreasonable number of occupants in the rental unit.

- [3] On July 17, 2023, a teleconference hearing was held before a Residential Tenancy Officer (the "Officer"). The Tenant, two witnesses for 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] Around 2019 to 2020, the Tenant and the Landlord entered into a verbal month-to-month tenancy agreement for the Residential Property. The Residential Property consists of a single unit in a 17-unit building. Rent is \$900.00 per month due on the first day of the month. A security deposit of \$900.00 was paid.

Landlord's Evidence and Submissions

- [5] The Landlord testified that the Tenant allows numerous people to engage in drug use on the Residential Property, leading to safety concerns and noise complaints. The Representative testified that people come and go from the Residential Property at all times of the day causing serious disruptions to other tenants. The Representative testified that the Tenant and those allowed in the Residential Property leave drug paraphernalia in common areas. The Representative testified that he has received "countless" complaints from other tenants about the Tenant.
- [6] The Representative further testified that he was assaulted by an individual admitted into the Residential Property by the Tenant ("R.W."). The Representative submitted into evidence a video of R.W. at the doorstep of the Residential Property striking the Representative. The Representative testified that R.W. was issued a no-trespass order for the building on June 24, 2023. The Representative testified that despite the no-trespass order, the Tenant continues to allow R.W. into the Residential Property.
- [7] The Representative testified that he has called the police on the Tenant several times, however he testified that he has never pressed charges as he wants them evicted, not criminally charged. The Representative submitted video of police at the Residential Property and four individuals exiting the unit.
- [8] The Representative further submitted numerous videos of individuals entering and leaving the Residential Property during the night and day. The Representative also submitted a video of an individual holding a knife by his waist in the building parking lot. The Representative testified that this was a friend of the Tenant and came to the Residential Property almost every day.

- [9] The Representative further submitted text messages from a tenant stating her safety concerns due to the activity occurring at the Residential Property. The text messages further stated that there are consistently 10-12 individuals in the Residential Property at all times of day.

Tenant's Evidence and Submissions

- [10] E.W. testified that she attends the Residential Property regularly, often two times a day as part of an outreach program. E.W. testified that the Tenant's behaviour does not disturb or endanger other tenants.
- [11] D.D. and E.W. did not dispute that R.W. assaulted the Representative at the Residential Property. D.D. testified that the assault R.W. did assault the on the Representative has already been dealt with by the no-trespass order. E.W. testified that the Tenant no longer allows R.W. in the Residential Property. E.W. testified that the Tenant abides by the no-trespass order and does not want R.W. around the Residential Property. E.W. testified that she has no knowledge of R.W. attending the Residential Property after the no-trespass order was issued. E.W. further testified that the Tenant has no telephone and has no way to report R.W. being at the Residential Property, therefore the Landlord must be the one to report violations of the no-trespass order.
- [12] E.W. testified that the individual depicted in the Landlord's video holding a knife was not near the Residential Property, but rather was at the other end of the parking lot. E.W. testified that the video has no relevance to allegations made against the Tenant.
- [13] E.W. further testified that there are a number of tenants at the building provided with injection materials, meaning that paraphernalia found in common areas cannot be singly attributed to the Tenant.

Analysis

- [14] The Landlord's reasons for the Notice are pursuant to subsections 61.(1)(c) and (d) of the Act which state:

A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:

(c) there is an unreasonable number of occupants in the tenant's rental unit

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

- [15] 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.
- [16] The Officer finds that based on the evidence, the Landlord has not produced evidence to establish that the Tenant permitted an unreasonable number of occupants in the Residential Property.

- [17] The Officer finds that based on the totality of the evidence, the Tenant allowed individuals on the Residential Property who have significantly and unreasonably disturbed others, pursuant to subsection 61.(1)(d) of the *Act*.
- [18] The Officer notes that R.W.'s physical assault of the Representative is undisputed between the parties, and is shown on video. The Officer notes that R.W. was permitted on the Residential Property by the Tenant at the time the assault occurred. The Officer finds that acts of violence toward a landlord plainly falls within activity prohibited under subsection 61.(1)(d) of the *Act*.
- [19] The Officer further notes the oral testimony of the Representative that R.W. has since returned to the Residential Property, notwithstanding the no-trespass order.
- [20] The Officer further notes the Landlord's evidence of text message records of a tenant's safety complaint concerning the individuals permitted by the Tenant in the Residential Property.
- [21] The Officer finds that the actions of individuals permitted into the Residential Property by the Tenant seriously disturbed or endangered others.
- [22] The Officer finds based on the evidence that the Notice is valid and the Application is allowed.

Conclusion

- [23] The Notice is valid and the Application is denied.
- [24] The tenancy agreement between the parties shall terminate effective 5:00 p.m. on July 31, 2023. The Tenant and all occupants 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 and all occupants 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 19th 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.